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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 268.

THE TURNER & SEYMOUR MANUFACTURING COMPANY,
APPELLANT,

vs.

THE DOVER STAMPING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED JULY 3, 1881.

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1 DOVER STAMPING COMPANY *vs.* TURNER & SEYMOUR MANUFACTURING COMPANY.

To the Honorable the Supreme Court of the United States:

The appeal of "The Turner & Seymour Manufacturing Company," the above-named defendants and appellants, respectfully showeth:

That on the 14th day of July, 1877, the above-named complainants filed their bill in the circuit court of the United States for the district of Connecticut against the above-named defendants and appellants, therein alleging that the appellants are a corporation duly established under the laws of the State of Connecticut, and that on the 7th day of July, 1863, one Timothy Earle obtained letters patent of the United States, bearing that date, and numbered 36,134, for "an improved egg-beater," securing to him and his assigns the exclusive right to said improvement for the term of seventeen years from said date.

That the complainants, the said Dover Stamping Company, before the 13th day of July, 1875, being then the assignees of
2 said letters patent, duly surrendered the same for re-issue, and after due proceedings had a new patent for the same invention, with a corrected specification, was on the 13 day of July, 1875, issued to the complainants, and further alleging that the defendants, well knowing that the premises had unlawfully infringed upon the exclusive rights secured to the said complainants by said last-mentioned letters patents, and praying for a decree of injunction and account, as by reference to said bill will more fully appear.

And the said defendants, on the 24th of November, 1877, filed their answer to said bill of complaint, admitting the issue of said letters patent to said Timothy Earle, the surrender and reissue of the same to the complainants as alleged in said bill, but denying that said new patent was for the same invention as that set forth in said original patent, and averring that the same was for a different device and therefore void.

And also denying infringement, and also denying that the said Earle was the original and first inventor of the improvement in said Letters Patent described.

To which answer the complainants filed their replication,
3 and the cause being at issue, the parties proceeded to take testimony in support of their respective allegations, and at the April term of said circuit court were fully heard by their counsel, and at the September term of said court a decretal order for an injunction and account was entered, referring said cause for the taking of the account to a master, and the cause was continued for the master's report; and thereafter, in the April term, 1880, the master's report came in and exceptions thereto were filed by the defendants at said April term, and the same was thereupon continued to the September term, 1880, when it came on to be argued

upon the master's report and exceptions, having been argued by counsel, was continued for judgment to the April term, 1881. That at a stated term of said circuit court, held at New Haven on the fourth Tuesday of April, 1881, a final decree was made and pronounced in the cause wherein it was ordered, adjudged, and decreed:—

1. That the defendant's exceptions to the master's report be overruled.

2. That the master's report be confirmed.

3. That the complainants recover of the defendants the sum
4 of ten thousand six hundred and $\frac{86}{100}$ dollars, as profits made by the defendants by their infringements.

4. That complainants recover of the defendants their costs to be taxed.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reviewed, and a decree made reversing said decree with costs, or such other decree as to the said Supreme Court may seem just.

Dated at New Haven, this 30th day of April, 1881.

JNO. S. BEACH,
Solicitor for Appellant and of Counsel.

5 Supreme Court of the United States.

DOVER STAMPING COMPANY
vs.
TURNER & SEYMOUR MANUFACTURING COMPANY. } In Equity.

Know all men by these presents, that we, L. W. Coe, of Torrington, Conn., E. Turner, of Torrington, Conn., are held and firmly bound unto the Dover Stamping Company in the sum of twenty thousand dollars, to be paid to the said Dover Stamping Company, its successors and assigns. To which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals. Dated this 4th day of May, 1881.

Whereas the above-named Turner & Seymour Manufacturing Company, defendant in the above-entitled cause, has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in said cause by the honorable circuit court of the
6 United States for the district of Connecticut, at its April term, 1881.

Now, therefore, the condition of this obligation is such that if the above-named Turner and Seymour Manufacturing Company

shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

L. W. COE. [L. S.]
E. TURNER. [L. S.]

Witnesses:
JAMES L. CARSON.
CHAS. F. BROOKER.

The above bond is approved of, the appeal allowed, and citation to complainant is directed to issue.

Hartford, *May* 7, 1881.

N. SHIPMAN,
District Judge.

7 By the Honorable Nathaniel Shipman, one of the judges of the circuit court of the United States for the district of Connecticut:

To the Dover Stamping Company:

Whereas the Turner and Seymour Manufacturing Company have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Connecticut, made in favor of you, the said Dover Stamping Company, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Hartford, in the district of Connecticut, in the second circuit, the 7th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

N. SHIPMAN,
District Judge.

8 DOVER STAMPING COMPANY *vs.* TURNER & SEYMOUR M'F'G. CO.

On appeal from circuit court of United States for the district of Connecticut, to the Supreme Court of the United States:

Service is accepted of the citation to appear before the said Supreme Court on the second Monday of October next, issued by Hon. N. Shipman, district judge, and bearing date May 7, A. D. 1881.

Dated at Boston this 12th day of May, A. D. 1881.

THOS. WM. CLARKE,
For Compl't.

The return of the judges of the circuit court of the United States for the district of Connecticut upon the foregoing appeal.

The bill, answer, pleadings, depositions, evidence of pleadings whereof mention is made in said appeal, follow in the words, viz:

9 Be it remembered that on the 14th day of July, 1877, there was filed in court a bill in equity in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut. In Equity.

DOVER STAMPING COMPANY
vs.
THE TURNER AND SEYMOUR MANUFACTURING COMPANY.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States, sitting within equity in and for the District of Connecticut:

The Dover Stamping Company, a corporation duly established by law, and having its usual place of business at Boston, in the State and District of Massachusetts, brings this its bill against the Turner & Seymour Manufacturing Company, of Wolcottville, Litchfield county, Connecticut, a corporation duly established under the laws of Connecticut, and thereupon your orators complain and say—

1. That heretofore, and before the seventh day of July, 1863, one Timothy Earle became and was the original and first inventor of an "improved egg-beater," and duly applied for letters patent therefor; and after due proceedings had, letters patent of the United States were duly issued to said Timothy Earle for the said invention dated on said seventh day of July, 1863, numbered 36134, thereby granting to said Earle, his heirs, executors, administrators, and assigns, for the term of seventeen years thereafter, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, as described in the schedule annexed to and forming a part of said letters patent, which
10 said letters patent, or a certified copy thereof, complainants will produce as your honors shall direct.

2. And that thereafter, and before the thirteenth day of July, 1875, your orators, the said Dover Stamping Company, became and were the assigns of said letters patent, and duly surrendered the same for reissue; and after due proceedings had, a new patent for the same invention, in accordance with the corrected specification, was, on the thirteenth day of July, 1875, duly issued to your orators, the said Dover Stamping Company, as in and by said reissued letters patent, in court to be produced, will more fully appear.

3. And that said Earle and his assigns during the first term, and your orators since the time of said reissue, have been exclusively possessed of said letters patent respectively, and by themselves and by their licensees have put the same in practice, and made and sold egg-beaters constructed according to the invention described in said letters patent, and their rights under the same have been generally respected.

4. But your orators are informed and believe, and therefore charge, that said The Turner & Seymour Manufacturing Company, since the date of said reissue, at said Wolcottville, have made, used, and sold great numbers of egg-beaters constructed, made, arranged, and combined according to the principles, construction, arrangement, and combination set forth, shown, and described in said reissued letters patent, without license or permission of your orators, and contrary to and infringement of their rights.

And your orators fear that said The Turner & Seymour Manufacturing Company will continue their infringement of said reissued letters patent, to the great and irreparable injury of your orators.

Wherefore, that said The Turner & Seymour Manufacturing Company may answer the premises; may be enjoined from the practice of said infringement pending this suit; may be perpetually enjoined from said infringement; may account to your orators for the gains and profits they have made from the manufacture, use, and sale of articles infringing said reissued letters patent; and may pay damages to the complainants for and on account of said infringement to the amount of twenty thousand dollars, and for other relief;

11 May it please your honors to grant to your orators—

1. A writ of injunction, conformable to the prayer of this bill, till further order of the court.

2. A writ of perpetual injunction.

3. A writ of subpœna.

Each in due and usual form and under usual penalities, and each directed to said The Turner & Seymour Manufacturing Company.

And your orators shall ever pray, &c.

DOVER STAMPING CO.
By L. BACON FOSS,
General Manager.

ELIAS MERWIN,
Of Counsel with Complainant.
THOS. WM. CLARKE,
Solicitor, 29 Pemberton Square, Boston.

UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS, *County of Suffolk*, } *ss:*

CITY OF BOSTON, *May* 22, 1877.

I, L. Bacon Foss, being duly sworn, on oath depose and say I am of lawful age, reside in Boston, Mass., and am a director and general manager of the Dover Stamping Company, complainints in this bill; that I have read the bill and know the contents thereof, and the same, except the matters stated on information, are, and the rest I believe to be, true.

L. BACON FOSS.

Subscribed and sworn to before me.
[SEAL.] F. F. RAYMOND, 2D,
Notary Public.

And on the same day a writ of subpœna, issued out of court, directed to the said defendants, which was duly served and returned, and which, with the return of the marshal endorsed thereon, is in the words and figures following, viz:

12 [SEAL.] The President of the United States of America to the Marshal of the District of Connecticut, sendeth Greeting:

You are hereby commanded to summon The Turner and Seymour Manufacturing Company, a corporation established under the laws of the State of Connecticut, and located in the village of Wolcotville, in the State and district of Connecticut, to appear before the judges of the circuit court of the United States of America for the district of Connecticut, in the second circuit, in equity, on the first Monday of September, 1877, wheresoever the said court shall then be, to answer a bill of complaint exhibited against said corporation in said court by the Dover Stamping Company, a corporation established by law and having its usual place of business at Boston, in the State and district of Massachusetts, and then and there to answer the same, and to do and abide by what said court may order and decree in the premises.

Make due service and return at least twenty days before said first Monday of September, 1877.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Hartford, this 14th day of July, A. D. 1877.

EDWIN E. MARVIN, *Clerk.*

The defendant is required to enter its appearance in said cause in the clerk's office of said court, on or before the day at which this writ is returnable, or, by the rules of said court, said bill will be taken as confessed.

EDWIN E. MARVIN, *Clerk.*

THOS. WM. CLARKE,
29 *Pemberton Sq., Boston, Mass., Complainant's Solicitor.*

12½ UNITED STATES OF AMERICA.

DISTRICT OF CONNECTICUT, *Litchfield County,* } *ss:*

WOLCOTTVILLE, *Aug.* 8, 1877.

Then and there I served this writ, by leaving at the usual place of of abode of L. W. Coe, the treasurer of the within-named Turner and Seymour Man'f'g Co., a true and attested copy of this writ in the hands of T. G. Nichols, and I left a like copy at the usual place of abode of E. Turner, the president of said man'f'g co., in the hands of T.

G. Nichols; and I left another like copy in the hands of J. L. Carson, the assistant secretary of said manufacturing company, the secretary not being a resident of this district and State, and not to be found within my precincts.

Attest: JOS. D. BATES,
U. S. Marshal.

Fees:

Service	$6 00
Copies and end.	3 00
Travel	6 48
	$16 23

13 UNITED STATES OF AMERICA.

DISTRICT OF CONNECTICUT, } *ss:*
Litchfield County, }

WOLCOTTVILLE, *August* 8, 1877.

On this 8th day of August, 1877, at Wolcottville, I served a notice of injunction motion to be made September 3d, 1877, and bill of complaint, and affidavits of James B. Manahan, William C. Hibbard, and Edward S. Renwick, in the matter of The Dover Stamping Company *vs.* The Turner & Seymour Manufacturing Company, by leaving true copies of the same in the hands of T. G. Nichols, at the usual places of abode of E. Turner, the president of said Turner & Seymour Manuf'g Co., and L. W. Coe, the treasurer of the within-named defendant's company, the secretary of said defendant company being a non-resident, and not to be found within my precincts.

Attest: JOS. D. BATES,
U. S. Marshal.

Fees:

Service	$2 00
Travel	6 48
Copy and end.	4 75
	$13 23

14 And on the same day Thomas Wm. Clarke, Esq., entered his appearance for the complainant, and on the 5th day of September, 1877, John S. Beach, Esq., entered his appearance for the defendant.

And on the 24th day of November, 1877, the defendant filed in court its answer in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut.

DOVER STAMPING COMPANY
vs.
THE TURNER & STAMPING M'F'G CO.

The defendants, for answer to so much of the bill of complaint

in said cause as they are advised it is material for them to answer, answering, say:

That they are informed and admit that letters patent of the United States were issued to Timothy Earle for alleged in-
15 vention in egg-beaters, bearing date July 7, 1863, and numbered 36134; but whether upon due proceedings had, they are not advised, and leave the complainants to make such proof thereof as they may deem proper. They are ignorant of the alleged assignment by said Earle to the complainants; and that the complainants may make due proof thereof, they, upon information and belief, deny the same. They admit that said original letters patent were surrendered by the complainants, and a new patent was issued to them at the date alleged in said bill; but, on information and belief, they deny that said new patent was for the same invention as that set forth in said original patent; but they aver the same was for a different devise and invention, and therefore void. And, upon information and belief, they deny that said Earle and his assignees have been exclusively possessed of said letters patent and of the invention therein described, either during the first term thereof, or during said reissue; and especially they deny that the rights of said complainant under said reissue have been generally respected; but, on the contrary thereof, they aver that the asserted rights of said complainants under said reissue have, at all times and by all persons interested therein, been denied, and that all attempts by said complainants to enforce the same have been defeated, and especially in certain suits brought by them, in the District of Massachusetts, against Edwin P. Monroe and against George H. Mason.

And the respondents further deny that, under any proper construction of said letters patent, they have infringed the exclusive rights thereby secured.

And they further answer and say, that if said Letters Patent shall be so construed as to involve the egg-beaters made and sold by these defendants as infringements thereof, they will aver and prove:

1st. That the said Earle was not the original and first inventor thereof, but that the same was, long prior to said alleged invention, fully described in Letters Patent of the United States and of Great Britain, as follows, to wit:

Letters Patent of the United States issued to E. C. Seaman, dated October 3, 1848; McLean and Morley, dated June 19, 1860.

And that long prior to the said alleged invention, the
16 same was known to and used by the following-named persons, at the places affixed to their names, respectively, to wit:

Name.	Residence.	Place of use.
Samuel Ayers.	Worcester, Mass.	Worcester, Mass.
John W. Howe.	" "	" "

And the defendants further deny that any other matter or thing contained in said bill, and material for the defendants to make an-

swer unto, is true to the knowledge and belief of the defendants; and they pray to be hence dismissed with their costs.

THE TURNER & SEYMOUR MANUFACTURING CO.,
J. L. CARSON, *Secretary.*

JOHN S. BEACH,
Solicitor and of Counsel.

NEW HAVEN, *Nov.* 22, 1877.

UNITED STATES OF AMERICA, *District of Connecticut*:

Personally appeared the above-named James L. Carson, secretary of the Turner & Seymour Manufacturing Company, and made oath that the statements made in the foregoing answer, so far as made on his personal knowledge, are true, and so far as made on information and belief, he verily believes the same to be true.

Before me—

[SEAL.] JOHN B. MILLS, *Notary Public.*

And on the 27th day of November, 1877, the complainant filed its *replication* in the words and figures following, viz.:

These repliants, saving and reserving all and all manner of advantage that can or may be taken by exception or otherwise to the manifold errors, insufficiencies and imperfections of the answer, say that they will aver, maintain and prove their bill to be true, full and sufficient in the law to be answered unto, and that the answer is untrue, imperfect and insufficient in the law to be replied unto by this repliant; without this, that there is any other matter, cause
17 or thing in the said answer contained, and not herein and hereby replied unto, confessed and avoided, traversed or denied, true to the knowlege or belief of these repliants; and humbly pray as in and by the bill they have already prayed.

By their solicitor,

THOS. WM. CLARKE.

And on the 2d day of April, 1878, amendment to answer of defendants was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut.

DOVER STAMPING COMPANY
vs.
THE TURNER AND SEYMOUR M'F'G CO. } In Equity.

The def'ts in the above-entitled cause amend their answer to the bill of complaint as filed by inserting at the end of paragraph marked 1st, as follows:

"2d. And that the same was in public use and on sale in this country more than two years before the application of said Earle for his patent."

JNO. S. BEACH,
Counsel for Def't's.

It is consented that the foregoing amendment to the deft's answer may be made and filed.

THOS. WM. CLARKE,
Counsel for Compl't.

And on the 11th day of October, 1878, complainants' evidence was filed in the words and figures following, viz:

Evidence for Complainants.

Testimony taken on the part of the complainants under and pursuant to the sixty-seventh rule of the Supreme Court of the United States, as amended; before John A. Shields, Esq., a United States commissioner.

NEW YORK, *December* 20, 1877, 12 o'clock m.

Present: Thos. Wm. Clarke, Esq., of counsel for complainants; John S. Beach, Esq., of counsel for defendants.

Complainants' counsel offers notice for taking deposition and stipulation.

U. S. Circuit Court, District of Connecticut.

DOVER STAMPING CO. *v.* TURNER & SEYMOUR MAN'F'G CO.

29 PEMBERTON SQUARE, BOSTON, *December* 12, 1877.

JOHN S. BEACH, Esq.,
Counsel for Defendants.

SIR: Please take notice that on Thursday, December 20,
18 1877, at 11 o'clock a. m., at the office of the clerk of the United States circuit court, in the city of New York, before John A. Shields, Esq., U. S. commissioner, I shall proceed to examine Edward S. Renwick, Esq., a witness for complainants. You are invited to attend and cross-examine.

THOS. WM. CLARKE,
Counsel for Dover Stamping Company.

Stipulation.

The defendants in the above-entitled cause hereby admit that they are and have been engaged in the manufacture and sale of egg-beaters like exhibits having a tag bearing the signature of "Jas. B. Manahan," and that said exhibits were manufactured and sold by them. The right of cross-examination of complainants' experts, and of objection to any and all of their testimony not taken in the presence of counsel for defendants, is hereby reserved to defendants, if exercised within reasonable time after said evidence has been taken.

THOS. WM. CLARKE,
For Dover Stamping Company.
JNO. S. BEACH,
For Turner & Seymour M'f'g Co.

Also a certified copy of re-issued letters patent granted to Dover Stamping Company, assignee of Timothy Earle, No. 6542, for Improvement in egg-beaters; and the same is marked "Complainants' Exhibit A, J. A. S., U. S. Commissioner."

19 EVIDENCE FOR COMPLAINANTS.

Complainants' Exhibit A.—J. A. S., U. S. Commissioner.

United States Patent Office.

Timothy Earle, of Lincoln, R. I., assignor, by mesne assignment, to the Dover Stamping Company, of Boston, Mass.

Improvement in Egg-Beaters.

Specification forming part of Letters Patent No. 39,134, dated July 7, 1863; re-issue No. 6542, dated July 13, 1875; application filed June 8, 1875.

To all whom it may concern:

Be it known that I, Timothy Earle, of Lincoln, (formerly Smithfield,) in the county of Providence, and State of Rhode Island, have invented certain new and useful improvements in egg-beaters; and I do hereby declare that the following specification, taken in connection with the drawing making a part of the same, is a full, clear, and exact description thereof.

Figure 1 is a view of the beater. Fig. 2 is another view of the same, with the rack which works it shown. Fig. 3 is a top view of the same.

Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process. One of these devices consists of two wire frames, one within the other, and made to revolve in opposite directions; another consists of a propeller-blade inside of a wire frame, the frame and blades being made to revolve in opposite directions; and still another consists of a propeller-blade which is made to rotate, while a pair of beaters have, at the same time a reciprocating motion.

All these machines, and all others with which I am acquainted, possess the common fault that the beaters, whether of wire or of the form of propeller-blades, do not cut the yolk and white of the egg, but literally beat them.

Now, as the albumen of an egg consists of a peculiar thick glairy substance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact, so well
20 is this understood that housewives commonly make use of the blade of a knife for the purpose.

My invention is designed to obviate the difficulty referred to; and consists in the use of a revolving frame, A, formed of thin strips of metal of the form shown, and mounted upon a spindle, B, around which it can freely rotate; and also of an outer fixed framed, C, of

the same general form as the inner one, but large enough to permit the inner frame to rotate within it. The outer frame is attached to the spindle B, and with it furnishes a support or frame for the operative parts of the machine. The inner frame is further provided with a series of cutters or blades, *a*, *a*, &c., arranged in any manner suitable for cutting through the fluid in many different places. These cutters or blades are simply pieces of sheet-tin or other suitable metal of the width of the inner frame, and are attached to the same by their ends, as is shown, and they are all so placed that their edges shall cut the material to be agitated when the frame A is rotated. The blades which form the outer fixed frame C are also placed in a similar position, and when the machine is in operation, cut through the current of material which is carried past them by the revolving frame, and thus aid in the operation in a similar manner. Upon the top of the frame A is attached a toothed wheel, D, through which, by means of the rack E, fig. 3, worked by the hand, a rotatory motion is given to the inner frame A in alternate directions. The frame C, at its upper end, is so formed and arranged in relation to the pinion D as to leave the proper space between them, upon either side, to receive the rack E, and serve as a guide or bearing to keep the rack in gear with the pinion; and H is a circular flange attached to the lower side of the pinion to prevent the rack from falling down.

My invention also relates to the method of holding the machine in position while it is used. In the previous machines for this purpose the machine has been generally attached to or supported upon and in connection with the vessel which contained the materials to be operated upon, thus requiring a specific kind of vessel for the purpose, which, in effect, formed part of the machine; or the frame of the machine was fixed to some stationary object, with the
21 revolving beater or beaters projecting downward below the machine into the vessel which contained the matters to be treated, the vessel being held below the machine and entirely detatched from it. But by my improvement the machine becomes a separate detached implement, which can be used in any vessel, and without any mechanical fastening of the machine to the vessel or to any other object. This part of my invention, therefore, consists in providing the bottom of the fixed frame C of the machine with a foot, F, or other suitable support, to rest upon the bottom of the vessel to support the lower part of the machine and raise the revolving beater-frame A above the fixed frame C sufficiently to permit it to revolve freely; and also providing the top of the machine with a handle, G, by which the machine can be held upright upon the bottom of the vessel by one hand, while the beater-frame is operated by the other, as is described.

When the machine is to be used it is placed with its foot F resting upon the bottom of the vessel containing the broken eggs. The left hand bears upon the handle G, and holds the machine in position. The rack E, held by the handle in the right hand, is en-

gaged with the pinion D, and the proper motion imparted to the frame A.

It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of a crank and suitable gearing, and the beneficial effect of the blades or cutters A, *a*, &c., would be obtained as well; but I prefer the method described of communicating motion to the frame A, for the reason that the machine is more easily cleaned and is more convenient for domestic use.

What I claim is—

1. The revolving beater-frame, formed of thin plain blades or cutters, arranged to cut edgewise through the material by their rotation, substantially as described.

2. The combination of the fixed frame, which contains and supports the operative machinery, provided with a foot or support at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described.

Executed June 3, 1875.

TIMOTHY EARLE.

Witnesses:
N. C. LOMBARD,
WM. C. HIBBARD.

22 *Also two egg-beaters, to which are attached a tag signed "James B. Manahan," being the egg-beater referred to in the stipulation filed; and the same are marked "Complainant's Exhibit B, J. A. S., Examiner."*

Also an egg-beater, marked on the driving-wheel "Earle's patent, July 7, 1863," being a specimen of the egg-beaters manufactured under complainants' patent; and the same is marked "Complainant's Exhibit C, J. A. S., Examiner."

DEPOSITION OF EDWARD S. RENWICK,

A witness produced on the part of the complainant, who, being duly sworn, deposes and says:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Edward S. Renwick; I am fifty-four years of age; I reside at Millburn, N. J., my place of business being in the city of New York; I am occupied principally as expert in patent causes and in soliciting patents.

Int. 2. Have you examined reissued letters patent No. 6542 for improvement in egg-beaters, granted to complainants upon the invention of Timothy Earle, and do you understand the contrivance therein described?

Ans. I have examined a certified Patent Office copy of the reissued patent mentioned in the question, and believe that I understand the contents thereof, and the construction and operation of the contrivance described and represented therein.

Int. 3. Have you examined the egg-beaters manufactured by the

defendants shown in complainants' Exhibit B, and do you understand the construction and operation of the same?

Ans. I have examined the two egg-beaters Exhibit B, and believe that I understand their construction and operation.

Int. 4. Please compare the two egg-beaters in Exhibit B with the contrivance described in the complainants' patent referred to, and particularly with the contrivance referred to in the claims of said patent, and state the resemblances and differences, giving your reasons for any opinion you may have.

23 Ans. Upon making the comparison required by the question, I find that each of the egg-beaters of complainants' Exhibit B, embodies in substance the contrivance recited in the first claim of the complainants' reissued patent, Exhibit A; that each of the said egg-beaters, Exhibit B, has a frame of plain blades, or cutters, arranged to cut edgewise through the material to be beaten; and each of said egg-beaters also contains mechanism for causing the said frame of cutters to revolve: all substantially as described in the said reissue. The frame of plain blades in each of said egg-beaters to which I have referred is the inner revolving frame, comprising two curved cutters, which correspond substantially with the two cutters A A of the said reissue, in forming a hollow frame, in being thin, in being plain, as distinguished from being twisted or otherwise distorted, and being arranged to cut edgewise through the material by their rotation, as distinguished from being arranged so as to move sidewise through the material, and from being skewed or inclined to the direction in which they move. The mechanism to which I have referred in each of said egg-beaters is the cog wheel and the pinion, by means of which the inner frame is caused to revolve around the central spindle; the said cog-wheel being a substantial mechanical equivalent for the rack E, and the pinion corresponding with the pinion D of the said reissue.

Whether each of the said egg-beaters of Exhibit B does or does not embody, in substance, the contrivance recited in the second claim of the reissue Exhibit A, depends, in my opinion, upon the legal construction which is given to the language of the said claim. If, for example, the true construction of the said language to be that the contrivance referred to in it is restricted to the exact peculiarities of construction of the contrivance represented and described in the previous part of the specification, then I am of the opinion that each of the said egg-beaters of Exhibit B does not embody, in substance, the combination of the said second claim.

If, on the other hand, the true legal construction of the language of the second claim be such as to comprise within its scope a combination of parts which are substantially equivalents of or substitutes for those recited in the said claim, for the purpose

24 of forming a combination which has the same mode of operation as that of the said claim, then I am of opinion that each of the said egg-beaters embodies, in substance, the contrivance recited in the said second claim. In the latter case the frame of each

of the said egg-beaters which corresponds with that recited in the said second claim, is that formed of the outer revolving cutters and the stock to which the cog-wheel is pivoted. The operative machinery or suitable mechanism of each of the said egg-beaters, corresponding with that recited in the said second claim, is the cog-wheel and the pinion nearer the handle. The foot or support at the bottom of each of said egg-beaters is formed by the lower end of the spindle and the washers or rings thereon; and the handle of each of said egg-beaters, corresponding with the handle of the said second claim, is the ring handle at the top of the stock. The functions which each of the members of the said egg-beaters of Exhibit B performs in the combination, and the relationship which each of said members bears to the others, are the same as they are in the implement represented in the drawings of the reissue; thus the frame of each of said egg-beaters is fixed, in the sense that it is of such a character as to enable the whole implement to be held steadily by the hand of the operator instead of depending for its support upon an attachment to some stationary object. The said frame also contains and supports the operative machinery, or suitable mechanism for rotating the beater, in the sense that the said frame confines the said mechanism to the revolving beater upon which it is to operate, and also, in connection with the spindle, supports it, as described at the bottom of the first column of page 1 of said reissue. The foot or support, consisting of the lower end of the spindle of each of said egg-beaters, and the washers or rings thereon, forms a suitable support to rest upon the bottom of the vessel to support the lower part of the machine and raise the revolving inner beater-frame (corresponding with frame A of said reissue) above the outer frame (corresponding with the frame C of said reissue) sufficiently to permit it (the inner revolving frame) to revolve freely, substantially as set forth at the head of the first column of page 2 of said reissue.*

The handle of each of said egg-beaters Exhibit B is one by which the machine can be held upright upon the bottom of the vessel by one hand, while the beater frame is operated by the other, also as set forth in the first colume of page 2 of said reissue.† Moreover, the implement as a whole, constituting each of said egg-beaters of Exhibit B, is what is termed in the said reissue (see lower end of second column, page 1) ‡ "a separate detached implement, which can be used in any vessel, and without any mechanical fastening of the machine to the vessel or any other object."

In forming the above opinion, I took into consideration the fact that in the implement represented by the drawings of the said reissue there are smaller cutters or blades designated by the letters *a*, while there were none in said egg-beaters of Exhibit B; but I do not consider this difference material, because, as I understand

*See *ante*, page 10, lines 6 *et seq.*
†See *ante*, page 10, lines 6 *et seq.*
‡See *ante*, page 10, lines 3 *et seq.*

the said reissue, the improvement recited therein is not restricted to any particular number of plain blades or cutters. I also took into consideration the fact that each of said egg-beaters of Exhibit B has a cog-wheel with a crank handle in place of the rack E of the said reissue; and also the fact that the movement of the revolving blades of the said two egg-beaters may be a continuous rotary motion instead of reciprocating rotary motion, as it is when a rack is used. I do not, however, regard these differences as material, because a cog-wheel is a well-known mechanical equivalent for a rack, for the purpose of imparting a rotary motion to a pinion, and because cog-gearing, such as exists in the said two egg-beaters of Exhibit B, is described in substance in said reissue in the following words: "It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of a crank and suitable gearing, and the beneficial effect of the blades or cutters" "would be obtained as well."

I have also taken into consideration the fact that in the form of implement represented in the drawing of said reissue there is but one revolving set of blades, whereas in each of the said egg-beaters of Exhibit B there is not only a revolving inner set of
26 blades corresponding with the inner revolving set of the said reissue, but in addition, the blades of the frame are caused to revolve so that they not only cut through the current of material that is carried past them by the inner revolving frame, as described in the said reissue, but in addition, tend to generate a current in the opposite direction to that generated by the inner frame. I do not, however, consider this change as one preventing each of said egg-beaters of Exhibit B from embodying in substance the contrivances recited in the two claims of said reissue, because it does prevent the said outer frame from performing the functions required of it by the said reissue, but is simply an additional or supplemental characteristic, which makes each of said egg-beaters an improvement upon that recited in said reissue, in the respect that each is enabled to effect a greater amount of the cutting of the material operated upon with the same speed of revolution of the blades which do the work.

[No cross-examination.]

E. S. RENWICK.

Sworn to before me, this twentieth day of December, 1877.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Evidence for Complainants in Rebuttal.

Taken under the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before John A. Shields, a standing examiner.

NEW YORK, *June* 21, 1878.

Present, counsel for both parties.

Deposition of Edward S. Renwick (recalled.)

Direct examination by THOS. WM. CLARKE, Esq., of counsel for complainants:

Int. 1. Have you previously been sworn and testified in this case?

Ans. I have.

27 Int. 2. Have you examined the specifications and drawings of the following patents, viz., to William T. Spence, of Jan. 24, 1860, numbered 26,958, for an egg-beater, the invention of Sylvanus Walker; David Shive, July 29, 1862, No. 36,030, for an egg-beater; Walter Hart, March 12, 1861, No. 31,663, for an egg-beater; Uriah Baker, Oct. 23, 1869, No. 30,453, for an egg-beater; P. A. Morley, assignee of McLean and Morley, June 19, 1860, No. 28,760, for an egg-beater; E. C. Seaman, Oct. 3, 1848, No. 5,821, for cream-freezer; and do you understand the construction and operation of the respective mechanisms described and shown in said specifications and drawings?

Ans. I have examined a certified Patent Office copy of each of the patents recited in the question, and believe that I understand the contents thereof, and the construction and operation of the mechanish described and represente l in each of the said patents, respectively.

Int. 3. Will you please compare the mechanism described in the Earle reissue, No. 6,542, granted to the complainant July 13, 1875, as a reissue of letters patent 39,134, of July 7, 1863, and referred to in the claim of the said reissue, with the respective mechanisms described in the letters patent to which your attention was called in the last question, and state in what respects the said mechanism of the Earle reissue resembles or differs from the several mechanisms described in the respective letters patent referred to.

Ans. Upon making the comparison required by the question, I find that the implements described in the letters patent of Spence, Shive, Hart, and Baker, resemble the mechanisms recited in the claims of the Earle reissue patent in some respects; thus, the machines of the Spence patent, the Hart patent, and the Baker patent, each contains mechanism for causing a frame of some kind to revolve, which mechanism, considered by itself, is either substantially the same as, or a well known substitute for, the mechanism for that purpose described in the said Earle reissue.

The machines of the Spence, Shive, Hart and Baker patents each contain a frame, which, considered by itself, is an equivalent of, or substitute for, the fixed frame of the said Earle reissue.

28 The machine of each of the said four patents, Spence, Shive, Hart and Baker, contains a device which is an equivalent for the foot or support of the said Earl reissue.

The machines of the Spence, Hart and Baker patents, each contains a handle which is substantially the same as that of the said Earle reissue.

The machine of each of the said four patents differs substantially from the mechanism required by the claims of the said reissue, in the respect that no one of the former has a frame of plain blades or cutters, arranged to cut edgewise through the material by their rotation; and inasmuch as a frame of cutters so arranged is an essential element of the mechanism of the Earl reissue, the machine of no one of said four patents contains the mechanism of the said Earl reissue. In making this statement I have taken into consideration the fact that each of said four patents describes a frame of some kind for beating eggs, but the frame in each case is a frame composed of round wires which differ, in their operation upon the egg matter, from cutters, in the respect that they tend to bruise it rather than to cut it, and consequently they are not equivalents of knives; moreover, from their round section such wires are required necessarily to be made of much larger diameter than the thickness of the blades of the knives of the Earle egg-beater, and the former consequently tend, by their greater thickness, to impart motion to the egg matter, instead of cutting through it and leaving it with as little progressive movement as possible.

The machine described in the Shive patent differs further and substantially from the machine of the Earle reissue in the respect that the former, although having a mechanism of some kind for operating beaters, has a mechanism which differs substantially from the mechanism or operative machinery for causing the cutters of the Earle machine to revolve. Thus the said mechanism of the Earle reissue machine is characterized by the peculiarity that it requires the movement of but one hand of the operator, leaving the other hand to grasp the handle of the implement, so as to hold the entire implement stationery in the vessel containing the egg matter.

29 The mechanism of the Shive patent, on the contrary, requires the movement of both hands of the operator to effect its movement; one of the hands being applied to one side of the two cylinders B, B, and the other hand being applied to the opposite side of the same. Unless both hands are moved with identically the same speed, and in opposite directions, the implement must be moved about in the vessel in which it is used; or, if the hands are canted in the least, a movement of the implement in the vessel must take place. In practice it would be impracticable to move both hands with identically the same speed and in opposite directions; so that the mechanism cannot be used in the same manner as that of the Earle reissue, in addition to the substantial difference in construction.

The machine or implement of the Shive patent differs further and substantially from the machine of the Earle reissue in the respect that the former lacks any handle, or substitute therefor, such as is described by the second claim of the said reissue.

The machine described in the Seaman patent contains mechanism for producing revolution, which, considered by itself, is substantially the same as the mechanism or operative machinery for producing the

revolution of the blades of the implement of the Earle reissue, but in other respects, the implement of the said Seaman patent is substantially different from that of the Earle reissue. In order that these differences may be understood, it must be borne in mind that the apparatus described in the said Seaman patent is one designed to freeze ice cream; and that an essential member of it is the can or vessel *f*, in which the cream is contained, and whose exterior is exposed to the freezing mixture of ice and salt. By reason of such exposure, the portions of the cream which are in contact with the upright wall and bottom of the can, lose their heat, and freeze more rapidly than the mass of cream nearèr the centre of the can; moreover, as such external portions of the cream lose their heat, they tend to cogeal fast to the interior surface of the can, and form a coating of a bad conductor of heat which obstructs the transmission of heat from the mass of cream nearer the centre of the can. Now the object sought to be attained by the apparatus of Seaman is to move the cooler portions of cream from the upright wall of the can, continually inward, and from the bottom of the can continually upward, leaving the warmer and more liquid portion of the cream to take their places, to become cooled and removed in turn. This operation of removal was effected in the Seaman machine by a series of scrapers, the sides of whose blades are set obliquely to the lines in which their edges are caused to revolve, and which are of necessity held concentrically of the can, so that the edges of the upright and bottom scrapers may revolve close enough to the surface of the can to scrape it of congealed cream, but without touching the can so as to rub upon it or injure it. This feature of causing the scrapers to revolve concentrically of the can, required, of necessity, a positive connection and combination of the operative machinery or mechanism with the can which the material on which the scrapers were operating is contained; and consequently in the Seaman patent, the operative machinery and the can and revolving scrapers are all held in fixed positions, relatively to each other, by means of a permanent frame. This Seaman apparatus, therefore, differs substantially from the implement described in the said Earle reissue, in the respect that the former does not have a frame of plain blades or cutters arranged to cut edgewise through the material by their rotation, but has, in place thereof, a frame of askewed or oblique cutters, whose primary purpose is to move the material upon which they operate, instead of cutting through it as the blades of the Earle implement do, and at the same time imparting the least possible progressive movement to it. The frame of said Seaman apparatus differs substantially from that of the said Earle implement, in the respect that it is combined with the vessel in which the beaters are caused to revolve, instead of being wholly independent of any vessel; so that the apparatus as a whole, of said Seaman, is not, as described in the said Earle reissue, a separate detached implement which can be used in any vessel, and without any mechanical fastening of the machine to the vessel or any

other object, but is a machine which is attached and mechanically fastened to the vessel in which the beater revolves.

The apparatus of the Seaman patent further differs substantially from that of the Earl reissue in the respect that the former has no handle by means of which its operative devices can be held upright upon the bottom of the vessel by one hand while the beater frame is operated by the other. The Seaman apparatus has on the contrary, a fixed frame for doing a part of the work of holding the operating devices in a upright position, while the can *f*, and the ice vessel *c*, do another part of this work. This appears from the fact that the connection between the frame and the upper end of the shaft *h*, is a conically pointed pivot, which is incapable of holding the beater and its cog-wheel from dropping from the frame of the machine; and the bottom of the can, and the bottom of the ice vessel *c*, which together form supports for the lower end of the beater *h*, are both required to maintain the beater and its cog-wheel in their proper relative positions for operation; the bottom of the can having a step, *g*, which receives the lower end of the beater shaft and the bottom of the ice vessel having fastened to it a second step, *d*, which receives a gudgeon b *x*, *e*, fastened to the under side of the can *f*. If, therefore, the can or vessel *f* (in which the beaters revolve,) and the ice vessel *c*, be either or both removed, the whole apparatus becomes inoperative, by reason of its disorganization.

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The said Seaman apparatus differs further and subatantially from the Earl reissue in the respect that it has no foot or support which projects below the path of movement of the beaters, and supports them above the bottom of the vessel in which the beaters revolve so as to prevent them from touching it. The support for such purpose is effected in the Seaman apparatus by the step *y*, which is a material part of the can or vessel in which the beaters are revolved, instead of being a foot which is separate from the can or vessel, and is combined with the beater, so as to be capable of being withdrawn with it from the can or vessel.

The two machines in the Morley patent resemble the implement of the Earl reissue in some respects, but are substantially different from it in others; thus each of the two egg-beaters of the Morley patent contains mechanism for causing beaters to revolve, which, considered by itself, is substantially the same as, or as a substantial equivalent for, the operative mechanism of the said earl reissue.

The egg-beater represented at fig. 2 of the Morley patent also contains a handle which is substantially the same as the handle of the Earle reissue; and it has, in addition, a fixed spindle and appurtenances, which is a substitute for the frame of the said Earl reissue. Each of the said implements of the said Morley patent differs substantially from the implement of the Earle reissue, in the respect that neither has a frame of plain blades or cutters arranged to cut edgewise through the material, but has, instead of it, an "arrangement of corrugated, twisted or spiral arms,"

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whose principal action is to move the material or impart a progressive motion to it instead of cutting through it with as little progressive motion as possible, as the blades or cutters of the Earle implement do.

The combination of members found in the egg-beater represented at fig. 2 of the Morley patent, differs substantially from that found in the Earle implement, in the respect that the frame (formed by the spindle *f* and its appurtenances) does not of itself hold the operative mechanism with its members in their operating positions. This appears from the fact that the beater with its funnel-shaped top S is simply slipped upon the lower end of the spindle, so that pressure against the bottom of the vessel in which the apparatus is placed when used, is required to keep the parts in their operative positions; and whenever the implement is out of a vessel, one of the hands of the operator must be employed to hold the beater and one member of the operative mechanism in connection with the spindle or frame, the handle, and the other member of the operative mechanism. The combination of the members of the said Morley egg-beater, fig. 2, is therefore incomplete, and the action of the vessel in which the implement is used is relied upon to keep the parts in their operative positions when in use.

The implement represented in fig. 1 of the Morley patent has no frame nor handle which corresponds with those of the implement of the Earle reissue, but has its moving parts combined with the lid of the vessel in which it is operated, so that the said vessel is relied upon as the means of holding the beaters in their proper position in it.

Adjourned to Saturday, June 22, at 11 a. m.

33 NEW YORK, *June* 23, 1878, 11 A. M.

Cross-examination by Charles F. Blake, Esq., of Counsel for Defendants.

Cross-int. 4. Are you familiar with the different kinds of wire in the market, and the forms of wire? and if yea, please state what they are.

Ans. I know that there are many kinds of wire in the market; by which I mean that there are wires composed of various materials, such as iron, steel, brass and gold; and also wires of one material coated with another, such as galvanized wire, having an iron core coated with zinc; tin wire, having a core of iron or steel coated with tin; and plated wire, having a core of one metal coated by plating with another.

As to forms of wire, I know that the universal form of the material known as wire, without prefix, is round, or, in other words, that it has universally a circular cross-section. I also know that certain articles have been made for special purposes, as, for example, for the manufacture of electric coils for electro-magnetic instruments and the manufacture of small wheels or pinions; in the former

case, the material has had a quadrangular and triangular section, and in the latter case, the material has had a fluted section. In these cases, however, the material is not known as wire without prefix; but I have known the material to be called square wire and three-sided wire, and have known material for the formation of small wheels to be called pinion wire. I have also sometimes known the material which is used in the manufacture of watch-springs, which is thin and flat, to be called flattened wire, because it is manufactured by first drawing it into the ordinary wire or round wire, and by then passing the wire between rollers, which flattens it.

Cross-int. 5. How long have you known flattened wire?

Ans. I have known a flattened wire ever since I have known of the manner in which watch-springs are made—probably forty years.

Cross-int. 6. Flattened wire has been in use for upwards of twenty years in hoop skirts, has it not?

Ans. Yes, fully.

34 Cross-int. 7. If the egg-beater of Baker were made with its arms or beaters of flattened wire, would it embody the invention described in the Earle reissue?

Ans. Whether it would or would not, would depend upon circumstances not stated in the question. If, for example, the beaters were made of flattened wire of the requisite strength, so arranged that the beaters moved flatwise through the material to be beaten, the assumed construction would not embody the invention described in the Earle reissue. But if the beaters should be made of flat wire of the requisite strength, so arranged as to cut edgewise through the material in their movement, then, in my opinion, the assumed construction would embody, in substance, the invention described in the Earle reissue.

Cross-int. 8. Answer the same question regarding the Hart beater.

Ans. The answer will be precisely the same.

Cross-int. 9. I find that the Earle reissue describes the outer frame as a fixed frame; do you think that it is material to the question of infringement whether or not the frame be fixed or whether it revolves?

Ans. Whether it is or is not, depends upon how much the words "outer frame" is understood to include; if the term "outer frame" include only the portion designated by the letter C, then it is immaterial whether it be immovable when in use, or be constructed to be moved in the material by mechanism. But if the term "outer frame" be intended to inclue the spindle B, or some equivalent or substitute for it, by means of which the frame is fixed to the handle, then I think that a part, at least, of the outer frame should be fixed, in the sense that it connected fixedly with the handle, so that whenever the handle is raised or depressed, this frame shall be carried with it, instead of being permitted to drop from it.

Cross-int. 10. In the egg-beater of the reissue, when in operation, the outer frame does nôt move at all, does it?

Ans. It does not move at all unless the handle which holds it be moved.

Cross-int. 11. In the proper operation of this beater while beating, the handle is not moved, is it?

35 Ans. If the beater be constructed in every particular as represented in the drawings of the patent, the outer frame is not moved, except as it may be swayed by the unsteadiness of the hand which holds it.

Cross-int. 12. In the Earle reissue one of the functions attributed to the outer frame is with the spindle to furnish the support or frame for the operative parts of the machine; do you understand that what you call the "outer frame" in the defendants' beater performs the same function?

Ans. I do, because I notice that the whole support in a vertical direction, afforded to the lower pinion in the defendants' machine (which pinion is one of the operative parts of the machine), is afforded by the outer frame of blades.

Cross-int. 13. In the defendant's machine do you understand that what you call the outer frame is in frictional contact with the bottom of the vessel containing the eggs?

Ans. I understand that it is not, as the button, foot or end of the spindle holds the frame slightly above the bottom of the vessel so as to be out of contact with it.

Cross-int. 14. What holds the outer frame of defendants' beater in its proper relation to the operative parts of the machine?

Ans. The spindle, including the button-formed end or foot and washer at the lower end thereof, and the frame of the machine enclosing the spindle, without which the spindle and the outer frame of cutters could not be held in place relatively to the cog-wheel and handle of the implement.

Cross-int. 15. If you take off this buttoned formed foot, the outer frame would fall off the spindle, would it not?

Ans. It would not, because, after it had moved a certain distance its further movement along the spindle would be stopped by the inner frame of cutters.

Cross-int. 16. In the beater of the reissue, the upper part of the outer frame serves as a guide to the rack which gives movement to the beaters, does it not?

Ans. Whether it does or does not depends upon the manner in which the gearing is constructed. If, for example, a straight

36 rack such as E be used as a part of the gearing, and the apparatus be so constructed that this rack is inserted between the pinion B and portion of the outer frame C, then a portion of that frame acts as a guide. But the description of the patent shows that "the beater of the reissue" is not restricted to the use of such a straight rack, as appears by the following words: "It is obvious that a continuous rotary motion may be easily imparted to the frame A, by means of a crank and suitable gearing." * * * When "the beater of the reissue" is constructed according to this descrip-

tion the outer frame would not serve as a guide to the rack, because there would then be no rack appertaining to the implement.

Cross-int. 17. Is there any difference in the construction and mode of operation between the foot of the beater of Hart and the foot of Baker and that of the defendants' machine?

Ans. There are slight differences in the construction of all three, but there is not, in my opinion, any substantial difference between them for the purposes of a foot for a portable egg-beater.

E. S. RENWICK.

Sworn to before me, this twenty-third day of June, 1878.

JOHN A. SHIELDS,
Examiner, &c.

[Adjourned to further notice.]

UNITED STATES OF AMERICA,

[SEAL.] MASSACHUSETTS DISTRICT, *ss:*

The President of the United States of America to the marshal of the district of Massachusetts, or either of his deputies, Greeting:

You are hereby required to summon David B. Morey, of Malden, and William C. Smith, of Boston, each having a place of business at 49 Haverhill street, in said Boston; Leonard Clark, of Springfield, A. F. Harvey, of Gloucester, S. P. Sawyer, of 82 Purchase street, New Bedford, and each and every of them, if he may be found in your district, to appear before C. W. Tuttle, Esq., a United States commissioner of our circuit court of the United States, at the office of Thomas W. Clarke, No. 29 Pemberton Square, in Boston, within and for the district of Massachu-
37 setts, on the twenty-sixth day of August current, at ten and a half o'clock in the forenoon of the same day, in his proper person to testify and give evidence of what he knows in relating to a certain cause now depending in the circuit court of the United States for the district of Connecticut, entitled the Dover Stamping Company against the Turner & Seymour Manufacturing Company, then and there to be heard and tried between them; and warn the said witnesses that for default and non-appearance they will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not, and make due return of this writ, with your doings thereon, unto our said court, as soon after the service thereof as may be.

Witness the Honorable Morrison R. Waite, at Boston aforesaid, the twentieth day of August, in the year of our Lord one thousand eight hundred and seventy eight.

ALEX. H. TROWBRIDGE,
Deputy Clerk.

THOS. WM. CLARKE,
For Complainants.

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

BOSTON, *26th August*, 1878.

Pursuant hereunto, I have summoned the within-named David B. Morey, William C. Smith, and Leonard Clark, by giving to each of them in hand, on the 21st of August, current, a true and attested copy of this precept. I paid fees for travel and attendance as follows: To said Morey, two dollars; to said Smith, one dollar and sixty cents; and to said Clark, eleven dollars and fifty cents. On the 22d inst. I gave in hand to the within-named A. F. Harvey a like copy, with five dollars for travel and attendance. On the 23d inst. I gave in hand to the within-named S. P. Sawyer a like copy, with seven dollars for travel and attendance.

R. G. USHER, *U. S. Marshal.*

Service	$2 50
Copies	2 50
Exp	13 30
Pd. wit.	27 10
	$45 40

38 Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me.

C. W. TUTTLE, *U. S. Commissioner.*

BOSTON, *Aug.* 26, 1878.

Present: Thomas Wm. Clarke, Esq., of counsel for complainants, Charles F. Blake, Esq., of counsel for defendants.

Deposition of Leonard Clark.

Direct examination by THOS. WM. CLARKE, Esq., of Counsel for Complainants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name, Leonard Clark; age, fifty-six years; reside in Springfield, Mass.; I am a manufacturer and dealer in stoves, furnaces, and paper stock.

Int. 2. How long have you been in that business?

Ans. Since 1849, except two years.

Int. 3. Did you know the firm of Allen & McElwin, of Springfield, in the year 1860; if so, what was their business at that time?

Ans. I knew them; they kept agricultural implements, seeds, house furnishing goods, &c.

Int. 4. Is that firm still in existence; if not, when was it dissolved, and what has become of its members?

Ans. It is not. It was dissolved about June, 1860, to 1863. Allen, I think, is now in Chicago. I think there were two McEl-

wins of the firm, one of whom is now in Springfield, of the firm of Kibby Brothers & Co., wholesale manufacturers of confectionery; the other McElwin is of the firm of the Parsons Paper Company, and one of the officers.

Int. 5. In the year 1860 was part of the business of your house the sale of egg-beaters?

Ans. Yes, sir.

Int. 6. Do you remember whether or not at that time you dealt with the firm of Ayres & Child, of Worcester?

39 Ans. I don't recollect whether I dealt with them at that time, but presume I did; I dealt some with them at different times.

Int. 7. You remember during the time of your dealing with Ayres & Child, whether you ever saw or had offered to you an egg-beater, purporting to be of the invention of Mr. Ayres?

Ans. I have no recollection now of buying an egg-beater, but I may have done so; if he made them, I presume I bought some.

Int. 8. Have you any recollection of the construction or operation of that egg beater?

Ans. I have not; I recollect having egg-beaters which were worthless, but whether they were of his make or not I can't say.

Cross-examination waived.

LEONARD CLARK.

Attest:

C. W. TUTTLE, *U. S. Commissioner.*

Deposition of David B. Morey.

Direct examination by THOS. WM. CLARKE, Esq., of counsel for complainants:

Int. 1. Please state your name, age, residence, and occupation; and what was your occupation in 1860?

Ans. My name is David B. Morey; age, sixty-six years; reside in Malden, Mass.; I am manufacturer of brittannia ware, and am a dealer in the same, and also in glassware; this was my occupation in 1860, and is to-day.

Int. 2. In 1860 did you know Samuel Ayres, of Worcester, or the firm of Ayres & Child, of that place; and if so, did you have any dealings with them that year?

Ans. I did; my firm, Morey & Smith, had dealings with the firm of Ayres & Child that year.

Int. 3. Please look at the exhibit before you, marked "Complainants' Exhibit Ayres," and say whether or not during the year 1860 you bought any egg-beaters of that pattern of the firm of Ayres & Child; and, if so, what became of them?

Ans. Well, I should say we did buy some, according to the

40 best of my recollection; a portion of them was sold, and a portion of them remained unsold.

Int. 4. What became of those that remained unsold?

Ans. They remained in the store until they were unsalable, dusty and demoralized generally, and then thrown in with a lot of other unsalable goods. I think they were thrown overboard with a lot of other unsalable traps.

Int. 5. Was it part of the business of your firm to sell egg-beaters?

Ans. It was.

Int. 6. What is your opinion of the practicality of the Ayers egg-beater, such as is shown in Complainant's Exhibit Ayers?

Ans. Well, I should answer that, that my opinion would be unfavorable.

Cross-examination by CHARLES F. BLAKE, Esq., of counsel for defendants:

Cross-int. 7. Was it part of your business to sell egg-beaters in 1860?

Ans. It was.

DAVID B. MOREY.

[Examination adjourned to September 20, 1878, at the office of C. F. Blake, Esq., in New York.]

Deposition of Alonzo F. Harvey.

Direct examination by THOS. WM. CLARKE, Esq., counsel for complainants:

Int. 1. Please state you name, age, residence, and occupation.

Ans. My name is Alonzo F. Harvey; age, 46 years; reside in Gloucester, Mass.; I am a manufacturer and dealer in stoves and tinware.

Int. 2. How long have you been in that business, and what was your business in 1860?

Ans. I was in that business in 1860.

Int. 3. During that year did you deal with the firm of Ayers & Child, of Worcester?

Ans. I don't remember that I did.

41 Int. 4. Do you remember ever dealing with the firm?

Ans. I do not. The name sounds familiar, however.

Int. 5. Please look at the exhibit now shown you, marked "Complainants' Exhibit Ayres," and say whether at any time you had a dozen, or some such number, of egg-beaters of that pattern; and if so, when?

Ans. I don't remember that I ever saw one like it before.

Int. 6. Do you know Samuel Ayres, of Worcester?

Ans. I do not know him.

Int. 7. Mr. Ayres has testified that on the 12th of September, 1860, he sold to A. F. H. Hartley, of Gloucester, Mass., twelve egg-beaters; and Mr. Howe, his partner, spoke of the party to whom they were all sold as A. F. Harvey; please say whether you know of

any person of the name of A. F. H. Hartley in Gloucester, in 1860, engaged in the same business with you, or in the business of selling egg-beaters.

Ans. I don't know of any such person.

Int. 8. Were you in partnership in 1860; if so, with whom?

Ans. I was, before September of that year, with J. F. Siclers.

[*Cross-examination waived.*]

A. F. HARVEY.

Attest:

C. W. TUTTLE, *U. S. Commissioner.*

Deposition of Stephen P. Sawyer.

Direct examination by THOS. WM. CLARKE, Esq., of counsel for complainants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is Stephen P. Sawyer; age, forty-nine years; reside in New Bedford, Mass.; I am a manufacturer and dealer in tin and sheet-iron ware, stoves, kitchen-furnishing goods, and so forth.

Int. 2. How long have you been in that business, and what was your business in 1860?

Ans. My business in 1860 was the same as now. In 1861, I went out of business entirely. I resumed this business the first of September, 1873.

42 Int. 3. During the year 1860 do you remember buying from the firm of Ayres & Child, of Worcester, any egg-beaters, say half a dozen or so?

Ans. I don't remember: I remember seeing a sample, but I could not tell now how it went, but, I think, by friction rolls. I can't find any record of buying them or doing anything with them whatever. If I had any I don't know what became of them.

Int. 4. Please look at the exhibit now shown you, marked "Complainants' Exhibit Ayres," and say whether or not that recalls to your mind the construction and operation of the Ayres egg-beater of 1860, shown you as a sample.

Ans. I can't say.

Int. 5. Can you tell whether or not at the time you saw the Ayres egg-beater of 1860, you considered it a useful machine?

Ans. I cannot say that I was favorably impressed with it.

Int. 6. Do you remember whether you tried any experiments with it, or had it put in practical operation?

Ans. I cannot say.

Int. 7. If you ever had any of those egg-beaters, did you have more than one lot, or did you see them or a sample of them, more than once?

Ans. I can't remember of having seen but one sample or one lot of them.

Int. 8. When you gave up business in 1861, what became of your stock?

Ans. It went into the assignee's hands, and he disposed of it.

[*August* 27, 1878.—Cross-examination waived.]

STEPHEN P. SAWYER.

Attest:

C. W. TUTTLE, *U. S. Commissioner.*

Deposition of Edwin P. Monroe.

Direct examination by THOS. WM. CLARKE, Esq., of counsel for complainants:

Int 1. Please state your name, age, residence, and occupation.

Ans. My name is Edwin P. Monroe; age, forty-nine years;
43 reside in Newark, N. J.; I am a manufacturer and dealer in hardware and metallic packing.

Int. 2. During the year 1860, were you engaged in any business; and, if so, in what?

A. Yes; in manufacturing egg-beaters, principally.

Int. 3. What sort of egg-beaters were you then engaged in manufacturing?

Ans. Like the egg-beater for which I obtained letters patent of the United States, reissued October 16, 1860.

[Counsel from complainants offer in evidence a certified copy of the original letters patent, granted E. P. Monroe, dated April 19, 1859, No. 23,694, for improved egg-beater; and the same is marked "Monroe Patent, C. W. T., U. S. Com'r;" also, reissued letters patent granted to E. P. Monroe, dated October 16, 1860, No. 1,062, for improved egg-beater; and the same is marked "Monroe Reissue, C.W. T., U. S. Com'r."]

Int. 4. Is the contrivance shown in the drawings annexed to the two papers just offered in evidence the contrivance which you were manufacturing, as you state in your last answer?

A. It is, with the exception of the number of wires. The drawing represents eight wires in each beater, and in 1860 we made with six wires in each beater. We varied the number of wires from time to time.

Int. 5. During the year 1860, how extensively were you manufacturing and selling egg-beaters?

A. I manufactured several hundred dozens.

Int. 6. From 1860 on, did the sale and manufacture of your egg-beater increase; if so, to how large an extent?

Ans. Yes; it gradually increased till I was the principal manufacturer of egg-beaters. Many times I have sold them in one hundred dozen lots; and the business amounted to more than one thousand dozen a year, and I think to several thousand dozen a year.

Int .7. Did you know the firm of Ayres & Child, of Worcester, Mass., or Samuel Ayres, in 1860?

Ans. I knew their store in Worcester. I don't know that I then knew Mr. Ayres.

44 Int. 8. Will you please look at the list contained on the 4th page of the printed defendants' evidence in this case, and say whether either of the parties mentioned in that list were customers of yours for egg-beaters during the year 1860 or later; and, if so, which they were, and where are they now?

Ans. I recognize as my customers Williams & Morandi, of Boston, Mass.; Bliven & Mead, and Edwin D. Bassford, both of New York; Waterman & Co. of Boston, Mass., and I think at that time Mowry & Smith, and Bridgman & Peabody, both of Boston; A. G. Garfield, of Chicago, Ill.; these were my customers in the year 1860; of these A. G. Garfield has been dead several years—also Mr. Waterman; the firm of Williams & Morandi has ceased to exist; Edwin D. Bassford is dead; the firm of Bliven & Mead has been converted into a corporation under the name of the Hart, Bliven and Mead Manufacturing Company.

I formerly sold to Shield & Brothers, of Philadelphia, and B. P. Cunningham, of Providence; I have not known anything of them for several years.

David S. Brooks & Son, of Hartford, Conn., were customers of mine in 1860, before and after the 24th of May, that year; I think they are still in business.

Int. 9. During your dealings with the parties you have mentioned as customers of yours in 1860, did you ever run across the Ayres egg-beater; and, if so, did you consider it at that time a serious competitor?

Ans. I did several times; when I first saw it I thought it so near like my own in its general appearance that from its resemblance it might sell so as to be an injury to me, but I never considered it a practical egg-beater.

Int. 10. After the year 1860 did you find the Ayres egg-beater in any respect a competitor in the market?

Ans. I saw them in the stores several times, apparently on sale, but I never heard of one being sold; I did not consider it a competitor.

Int. 11. Please look at Complainants' Exhibit Ayres, and say whether or not that is the sort of egg-beater known to you

45 as the Ayres egg-beater; and, if not, how did they differ if any way from that?

Ans. This is one form of it; another form was substantially the same, except that in place of the friction gearing, cog-wheels were used.

Int. 12. In your answer to interrogatory 9, you say you did not consider the Ayres egg-beater practical: will you please give the reasons why, and whether those reasons are still, in your opinion, valid?

Ans. In the machines made with the friction gearing, the driving-wheel might be turned without revolving the beater; and in the

best that I have seen of this form, there was not sufficient adhesion in the gearing to beat eggs to a froth; they overcame this difficulty by adopting the cog-wheels similar to what I was using in egg-beaters of my manufacture. But after this was done it was still an impracticable machine, principally on account of the close juxtaposition of the two elements of the beaters, which would form a place of lodgment for the liquid egg, which would be quite impossible to remove after it became rancid or stale. Another difficulty I found in the softness of the tin used in forming the beater, as the beaters would be bent and disarranged upon slight cause. I also found it defective on account of the comparative size of the driving-wheel and pinion, it not having sufficient speed in the rotation of the beaters. I also considered it objectionable to use strips of tin for the beaters, as the edges would become corroded so that they would be uncleanly, and, on account of the roughness of the edge, difficult to clean. I have not seen occasion to change my opinion of it.

Int. 13. Comparing the beating of eggs with the stirring up of ice cream in the freezing process, which requires the agitators to be run the fastest? Give us, as near as you can, the proportional degrees of velocity.

Ans. The egg-beater requires to be run very much faster; I know of no limit that they might be run to beat eggs. In making butter there is a limit; a slow movement makes very much better butter. A quick movement seems to destroy the life and sparkle in the butter, making it of the consistency and taste of lard or grease.

46 Int. 14. In your experience with egg-beaters, what do you consider about the practicality of using corrugated or twisted strips of flat metal for the beating frames of egg-beaters?

Ans. If the strips of metal were cut from sheet-tin, they would be liable to the same objection before referred to, in corroding, cleanliness and keeping their form; they would also be difficult to keep clean in proportion to the depth, size and amount of the corrugations; if the corrugations are slight in depth, and the openings so as readily to get a cloth into them, they would be less objectionable than deeper and finer corrugations; the twisted form would be even more difficult, on account of the changing position of the surfaces.

Int. 15. Did you ever see the McLean & Morley egg-beater?

Ans. The only one that I have ever seen was in the Patent Office at Washington; I tried to get one from Mr. McLean, one of the patentees, who has an office in New York, and he said that he had none, and he thought the one at Washington the only one ever made.

Int. 16. Did you ever try or know of the use of a moving rubber surface impinging against a nutmeg-grater surface for a friction-gear; and if so, how serviceable and practical is such an arrangement?

Ans. The only one that I remember to have seen was on the

McLean & Morley egg-beater model in Washington; I should not consider it durable or practical for such a purpose.

[Adjourned to Tuesday, Aug. 27, 1878, at 11 o'clock.]

AUGUST 27, 1878.

Cross-examination by CHARLES F. BLAKE, Esq., of counsel for the defendants:

Cross-int. 17. Are you a licensee of the complainants?

Ans. No, I am not, and have no interest in the suit.

Cross-int. 18. Have you any contract with complainants regarding their egg-beaters?

Ans. I have not.

Cross-int. 19. Then you have no other relation to them than an ordinary customer buying their egg-beaters; is that so?

Ans. That is so.

47 Cross-int. 20. You were sued by them on this patent, were you not?

Ans. I was.

Cross-int. 21. Did you set up the Ayres egg-beater as one of the defenses in that case?

Ans. I did.

Cross-int. 22. The suit was compromised, was it not?

Ans. It was.

Cross-int. 23. Were you aware of the defect of the Ayres egg-beater while you were defending your suit?

Ans. I was.

Cross-int. 24. What parts of the Ayres egg-beater do you think were so close together as to form a place of lodgment of a liquid egg, which it would be impossible to remove?

Ans. Where the different members of the beater came in contact, especially at their points of attachment with the central shaft and the outer braces or supports.

Cross-int. 25. What defective construction do you find in the edges of the arms of the Ayres beater?

Ans. As they appear to have been cut from sheet-tin, the edges would necessarily be of iron, which would be more readily corroded than the portions having tinned surfaces.

Cross-int. 26. Would the same difficulty be found in all egg-beaters whose cutters or blades are pieces of sheet-tin?

Ans. I think it would.

Cross-int. 27. When the person has finished using the egg-beater, is it not usual and proper to to immediately clean it with hot water?

Ans. It is proper, and should be usual; but from the knowledge that I have, more egg-beaters are cleaned in cold or nearly cold water than otherwise.

Cross-int. 28. Do not the points of union of the Earle beater

Complainants' Exhibit C, afford places where the egg matter might lodge, if not properly cleaned?

Ans. But slightly so, in comparison with the Ayres arrangement, the points of attachment or connection of the different members being filled and rounded with solder.

48 Cross-int. 29. Will you produce and annex to this deposition copies of the affidavits used by you in your defense to the suit against you?

Ans. I have no copies.

Cross-int. 30. What became of them?

Ans. All of the papers, documents, and models used in that case were given to Mr. Foss, of the Dover Stamping Company.

[Counsel for the defendants requests the counsel for complainants to produce the affidavits and exhibits called for and named in the last question and answer.]

[Counsel for complainants produces all the papers in said suit, turned over by Mr. Munroe, and on their being examined by the counsel for defendants he waives their production.]

Cross-int. 31. At the time the suit was pending against you, another suit was pending on the same patent in the district of Massachusetts; you defended that suit also, did you not?

Ans. I did.

Cross-int. 32. Will you please produce the documents, papers, affidavits and exhibits used by you in defending that suit?

Ans. I have none.

Cross-int. 33. What became of them?

Ans. They were given to Mr. Foss.

[Counsel for defendants requests counsel for complainants to produce the papers and exhibits mentioned in the 32d cross-question.]

[Counsel for complainants produces the following papers in Dover Stamping Company *v.* Mason *et als.*: Order to show cause, October 18, 1875, why an injunction should not issue; defendants' answer; affidavit of Hibbard in support of the motion, and a bundle of papers containing affidavit of Edwin P. Munroe, 11th November, 1875; Samuel Ayres, 10th November, 1875; Ayers' specifications; affidavit of James P. McLean, 11th November, 1875; J. M. Falconer, 11th November, 1875; Samuel Ayres, 10th November, 1875; Edwin P. Munroe, 11th November, 1875; Arthur Chester, 3d November, 1875; English specifications of Thomas Bentley and drawing; affidavit of Henry L. Brevoort, 16th November, 1875, and specification of H. Miller; affidavit of Timothy Earle in reply; testimony

49 taken by complainants, January, 1876; Exhibit Ayres No. 3, and states that the beater marked "Complainants' Exhibit Ayres" in this case is the same as the one marked "Ayres No. 2" in the other case, and had the tag to that effect removed from it yesterday, and that he does not know where the other exhibits,

Ayres No. 1, and those named in the Earle affidavit, now are, but presumes they are on the files of the circuit court of Massachusetts.]

Cross-int. 34. Did you in your affidavit in the case of the complainant here against Mason, say, "I have set up the following patent, which, in my opinion and in the opinion of my counsel and expert, anticipates the alleged invention of Timothy Earle upon the reissued letters patent for which this suit is brought?"

Ans. I think I did.

[Counsel for defendants offers in evidence a copy of the two affidavits, which are maked "Defendants' Exhibit Monroe 1 and Monroe 2, C. W. T., U. S. Com'r.]

Direct examination resumed:

Int. 35. In the Earle egg-beaters, as you observed them on the market, like Complainants' Exhibit C, do you remember the material of which the cutting blades were made, whether of ordinary strips of sheet-tin or of flattened wire?

[Objected to as not being in rebuttal in this cross-examination; also as immaterial.]

Ans. I am not positive, but I think that I have seen both materials used. The most that I have seen, I am quite certain, were made of flattened wire. I have seen some where most of the inner beater was made of flattened wire, and the outer beater round wire.

Int. 36. In that construction did the beater present the defects of the Ayers beater with regard to the ragged edges of the cutting blades?

Ans. Those made of flattened wire did not have that defect, but those made with tin did.

EDWIN P. MONROE.

[Complainants' counsel offers in evidence a certified copy of file wrapper and contents in the matter of letters patent granted
50 to Timothy Earle, July 7, 1863, No. 39,134, for improved egg-beaters; and the same is marked "Earle File Wrapper, C. W. T., U. S. Com'r.]

[Counsel for defendants objects to so much of the file wrapper and contents of the Earle patents as consists of the affidavits contained therein.]

Attest:

C. W. TUTTLE, *U. S. Commissioner.*

Defendants' Exhibit Monroe 1.—*C. W. T., U. S. Com'r.*

United States Circuit Court, District of Massachusetts, in Equity.

THE DOVER STAMPING COMPANY *vs.* GEORGE H. MASON *et al.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Affidavit of Edwin P. Monroe.

Edwin P. Monroe, being duly sworn, says as follows:

I am forty-eight years of age, and am a manufacturer of egg-beaters and apple-parers.

The defendants in this suit are vendees of mine, and the defense of this case will be carried on by me.

The Dover Stamping Company, the complainants herein, have also served me in the district of New Jersey, where I am manufacturing the egg-beaters which the complainants herein claim infringe the letters patent upon which this suit is brought, and for the sale of which the defendants herein are served.

The answer was filed in the case against me on the first day of November last past, and in it I have set up the following patents, which, in my opinion, and in the opinion of my counsel and expert, anticipate the alleged invention of Timothy Earle upon the reissued letters patent for which this suit is brought.

In the American letters patent granted to—

51 A. W. Carroll, dated October 25, 1832.
Ralph Collin, dated December 23, 1856.
Harvey Miller, dated December 1, 1857.
J. B. Reich, dated December 15, 1857.
Patrick Mihan, dated March 23, 1858.
W. Bowman, dated April 27, 1858.
J. F. & E. P. Monroe, dated April 19, 1859.
Samuel F. Jones, dated May 3, 1859.
T. Mckean, dated May 24, 1859.
John Pine, dated November 15, 1859.
S. Walker, dated January 24, 1860.
F. Ashley, dated May 1, 1860.
J. P. McLean & P. A. Morley, dated June 19, 1860.
H. F. Drott, dated September 18, 1860.
Nicholson & Earle, dated September 25, 1860.
Uriah Baker, dated October 23, 1860.
Walter Hart, dated March 12, 1861.
David Shive, dated July 29, 1862.
A. L. Sperry, dated August 30, 1859.
Nathan Rantzahn, dated March 19, 1850.
R. L. Sherman, dated August 6, 1850.
Henry Stoughton, dated December 18, 1849.
Harvey Brown, dated April 6, 1858.
A. L. Caswell, dated November 15, 1859.
Loomis & Lamb, dated September 2, 1856.
Simeon Emerson, dated April 2, 1850.
P. H. Watson, dated May 16, 1848.
A. B. Loomis, dated April 2, 1850.

And the English patent granted Thomas Bentley, dated September 26, 1861, numbered 2400.

And in the rejected application of Groves & Whitman, rejected April 13, 1849.

Also the rejected application of P. A. Morley, 1860.

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And the English patent granted Thomas Bentley, dated September 26, 1861, numbered 2400.

And in the rejected application of Groves & Whitman, rejected April 13, 1849.

Also the rejected application of P. A. Morley, 1860.

And that the same invention was shown and publicly exhibited at an exhibition of the Massachusetts Charitable Association, held at Boston, Mass., in 1856.

52 In the said answer also appear the following names of persons who had prior knowledge and use of the said alleged invention of said Earle:—

James F. Monroe, Edwin P. Monroe, Moses Babcock, George S. Monroe, and Lewis B. Monroe, all at Charlestown, State of Massachusetts.

By Samuel Ayres and William B. Collier, at Worcester in said Massachusetts, and by J. M. Falconer, of New York city.

I am informed by my counsel and expert that the above constitutes a perfect defense to any suit that is brought or may be brought under the said Earle reissued patent on which this suit is brought.

EDWIN P. MONROE.

Subscribed and sworn to before me, this eleventh day of November, 1875.

GEORGE F. BETTS,
U. S. Com'r South. Dist. N. Y.

A true copy of the original.
Attest:

C. W. TUTTLE, *U. S. Commissioner.*

Defendants' Exhibit Monroe 2.—C. W. T., U. S. Com'r.

United States Circuit Court, District of Massachusetts. In Equity.

DOVER STAMPING COMPANY *v.* GEORGE H. MASON.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Affidavit of Edwin P. Monroe.

Edwin P. Monroe, being duly sworn, says as follows:

I am the Edwin P. Monroe who has already made an affidavit in this cause.

I made the model egg-beater marked "Defendants' Exhibit
53 Ayres No. 3," from the specification and drawing of the application of Samuel Ayres for letters patent therefor, filed February 13, 1860. I am a manufacturer of egg-beaters and apple-parers, and believe that the said Defendant's Exhibit Ayres No. 3 is made in strict conformity with the invention described in his (the said Ayres') application for patent heretofore referred to, and shown in the drawings thereto attached.

On or about the 30th of October, 1875, I went to the city of Washington for the purpose of finding the original model that accompanied the said application of Mr. Ayres. I was there informed that this model, in conformity with the practice of the Patent Office in rejected cases, had been sold, and that the records of the Patent Office showed that this model had been sold to the Dudley Observa-

tory at Albany, N. Y. I then went to the said Dubley Observatory in search of the model, but there it could not be found; and I have since made further inquiry for it, but can find no trace of it whatever.

EDWIN P. MONROE.

Subscribed and sworn to before me, this eleventh day of November, 1875.

GEORGE F. BETTS,
U. S. Com'r South. Dist. N. Y.

A true copy of the original.
Attest:
C. W. TUTTLE, *U. S. Commissioner.*

Earle File Wrapper.—C. W. T., U. S. Com'r.

The United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted Timothy Earle, dated July 7, 1863, No. 39,134, for improved egg-beaters.

54 In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-first day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

[SEAL.] ELLIS SPEAR,
Acting Commissioner.

15 *Cert.*

PROVIDENCE, R. I., *Dec.* 19, 1862.

Hon. D. P. HOLLOWAY,
Commissioner of Patents.

SIR: I send by this day's mail the specification and drawings belonging to the application of Timothy Earle, of Smithfield, for letters patent for improvement in *egg-beaters*, and enclosed I send fifteen dollars as the first fee payable thereon.

The model has been forwarded by express.

Your very obedient servant,
BENJ. F. THURSTON,
Attorney for Timothy Earle.

[Indorsed:] Rec'd and filed Dec. 22, '62.—E. E.

2 *drgs.*

To the COMMISSIONER OF PATENTS:

The petition of Timothy Earle, of Smithfield, in the county of Providence, and State of Rhode Island, respectfully represents—

That your petitioner has invented a new and useful improvement in egg-beaters, which he verily believes has not been known or used before his invention and use thereof; he therefore prays that letters patent of the United States may be granted therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in such case made and provided; he having paid fifteen dollars into the treasury, and otherwise complied with the requirements of said act.

TIMOTHY EARLE.

55 And I, the said Timothy Earle, do hereby nominate, constitute, and appoint Benjamin F. Thurston, of the city and county of Providence, in the State of Rhode Island, my lawful attorney, for me and in my name to present the within application for letters patent to the Commissioner of Patents, to prosecute the same to a final decision, to make any and all amendments or alterations in the same that may become necessary, or which he may deem advisable and proper, for me to receive from the Patent Office any letters patent which may be issued on the said application, and generally do all and any such matter and thing as may be necessary or proper to secure by letters patent the invention herein described.

TIMOTHY EARLE.

COUNTY OF PROVIDENCE, *State of Rhode Island*, } *ss:*

On the nineteenth day of December, 1862, before the subscriber, a notary public in and for the said county, personally appeared the within-named Timothy Earle, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described improvement in egg-beaters, and that he does not know or believe that the same was ever used or known before his discovery and use thereof; and that he is a citizen of the United States.

BENJ. F. THURSTON,
Notary Public.

To all whom it may concern:

Be it known that I, Timothy Earle, of Smithfield, in the county of Providence, and State of Rhode Island, have invented a new and useful improvement in egg-beaters; and I do hereby declare that the following specification, taken in connection with the drawings making a part of the same, is a full, clear and exact description thereof:

Figure 1 is a view of the beater.

Figure 2 is another view of the same, with the rack which works it shown.

Figure 3 is a top view of the same.

Various devices have been employed for the purpose of
56 beating eggs more expeditiously than by the familiar hand process. One of these devices consists of two wire frames,

one within the other, and made to revolve in opposite directions; another consists of a propeller blade inside of a wire frame, the frame and blades being made to revolve in opposite directions; and still another consists of a propeller-blade which is made to rotate, while a pair of beaters have, at the same time a reciprocating motion.

All the machines, and all others with which I am acquainted, possess the common fault that the beater, whether of wire or of the form of propeller blades, does not *cut* the *yolks* and whites of the egg, but literally beat them.

Now as the albumen of an egg consists of a peculiar thick, glairy substance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact so well is this understood that housewives universally make use of the blade of a knife for the purpose.

My invention is designed to obviate the difficulty referred to, and consists in the use of a frame, A, fig. 1, mounted on a spindle, B, around which it can freely rotate. An outer frame, C, of the same general form as the inner one, but large enough to permit the inner frame to rotate within it is attached to the spindle B, and furnishes a support for it. The inner frame is provided with a series of cutters, *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in many different planes. These cutters are simply pieces of sheet-tin or other suitable metal of the width of the inner frame, and so placed that their edges shall cut the material to be agitated when the frame A is rotated. Upon the top of the frame A is attached a toothed wheel, D, through which, by means of the rack E, fig. 3, worked by the hand, a rotary motion is given in alternate directions.

When the machine is to be used, it is placed with its foot F resting upon the bottom of the vessel containing the broken eggs; the left hand bears upon the handle G and holds the machine in position; the rack E, held by the handle in the right hand, is engaged with the pinion D, and the proper motion imparted to the frame A.

It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of a crank and suitable
57 gearing; and the beneficial effects of the cutters *a*, *a*, *a*, would be obtained as well; but I prefer the method described of communicating motion to the frame, for the reason that the machine is more easily cleaned, and is more convenient for domestic use.

What I claim as my invention, and desire to secure by letters patent, is—

The use of a series of cutting edges, *a*, *a*, *a*, *a*, when attached to a frame, A, which is capable of being rotated, substantially as described, for the purpose specified.

In witness whereof, I have hereunto set my name this 19th day of December, A. D. 1860.

TIMOTHY EABLE.

Winesses:
BENJ. F. THURSTON,
JOHN H. STINERS.

[Endorsed:] Rec'd and filed Dec. 22, '62. E. E.

26th.

December 26, 1862.

SIR: Nothing patentable can be found in your application for an egg-beater. In the application of Samuel Ayers, rejected February 18, 1860, you will find the same cutting blades. In some beaters made of fine wire, the cutting edges or surfaces are smaller than the cutters in yours. The case is necessarily rejected.

TIMOTHY EARLE,
(Care of B. F. Thurston,)
Providence, R. I.

ROOM NO, 8, J. T. F.

[Endorsed:] Brief S. Earle. Rejected Dec. 26, '62. J. T. F.

Affidavit of Stephen R. Clark.

Stephen R. Clark, of Pawtucket, in the county of Providence, and State of Rhode Island, deposes and says, as follows:

I am sixty-three years o fage, and am a machinist by occupation. Before the twenty-sixth day of March, 1859, but how long 58 before I cannot say, but am of the belief that it was about six weeks before, Mr. Timothy Earle, of Smithfield, brought to me some castings to be finished up. I recognize two of the castings here shown to me. The time I am able to fix from my books, which contain the charge for the work, the charge being made after the work was done, and on the twenty-sixth day of March, 1859.

The number of castings brought to me was three of each kind; that is to say, there were three windmill wheels with four radial arms intended to be revolved in one direction, and three wheels of like character arranged to be revolved in the opposite direction.

I understood from Mr. Earle that he designed to make a machine for beating eggs. I arranged three wheels on shafts as follows: there was an upright shaft, to near the bottom of which three of these cutters was attached; there was then a hollow shaft which surrouded the rest of the inner shaft, and to which the other three cutters were attached by means of a gearing. A rotary motion in opposite directions was given to these shafts.

STEPHEN R. CLARK.

PROVIDENCE, *sc:*

In Providence, in said county, on this seventeenth day of March, A. D. 1863. Then appeared the aforenamed Stephen R. Clark, and made oath to the truth of the foregoing statement, by him subscribed.

Before me, JOHN D. THURSTON,
Justice of the Peace.

[Indorsed:] Affidavit of Stephen R. Clark.

Affidavit of Joshua White.

Joshua White, of Pawtucket, in the State of Rhode Island, deposes and says, that he is forty-four years of age, and is proprietor of an iron furnace located in said Pawtucket. That he is acquainted with Timothy Earle, of Smithfield, in said State, and has been acquainted with him for ten years last past. That early in the month of February in the year 1859, the said Timothy Earle brought to this deponent two wooden patterns, and requested castings to be
59 made therefrom. The patterns were in the form of windmill wheels, and were provided with four radial arms; the edges of the arms were made sharp so as to act as cutting instruments; one of these cutters had its arms inclined so as to bring its cutting edges into action when revolving in one direction, and the other was arranged to act *vice versa*. I did not know at the time what the patterns were intended for, but soon afterwards learned that they were to be used in a machine invented by Mr. Earle for beating eggs.

The castings shown to me are the castings which I . . . made from the patterns which were brought to me.

JOSHUA S. WHITE.

PROVIDENCE, *ss:*

In Providence, in said county, on this seventeenth day of March, A. D. 1863, there appeared the aforenamed Joshua S. White, and made oath to the truth of the foregoing statement, by him subscribed.

Before me, JOHN D. THURSTON,
Justice of the Peace.

[Indorsed:] Affidavit of Joshua White.

Affidavit of Adin Barber.

Adin Barber, of Pawtucket, in the county of Providence, and State of Rhode Island, deposes and says that he is a pattern-maker, and has been engaged in that business at Pawtucket, R. I., for about fifteen years last past. That some four years ago Mr. Timothy Earles, with whom this deponent is acquainted, requested him to make a set of patterns for an improvement which he had originated in machines for beating eggs. He described his idea to me and I made several sets of patterns of different sizes; one of the sizes is exhibited in the castings now shown me, and which I believe to have been made from one set of the patterns made by me. Mr. Earle requested me to refer him to some competent person to finish up the castings which he intended to procure from said patterns, and I referred him to Mr. Stephen R. Clark. All of the patterns made by me were in the form of a windmill wheel with four radial arms, each arm having a cutting edge. Mr. Earle
60 proposed to have two wheels to each beater, and designed to have them revolve in opposite directions.

ADIN BARBER.

PROVIDENCE, *sc:*

In Providence in said county, on this seventeenth day of March, A. D. 1863. Then personally appeared the aforenamed Adin Barber, and made oath to the truth of the foregoing statement, by him subscribed.

Before me,
JOHN D. THURSTON,
Justice of the Peace.

[Indorsed :] Affidavit of Adin Barber.

Application of Timothy Earle.—Egg-Beater.

PROVIDENCE, R. I., *April* 6, 1863.

HON. D. P. HOLLOWAY,
Commissioner of Patents.

On the 28th of December, the application of Timothy Earle for letters patent for an improvement in egg-beaters, was rejected on the ground that it was anticipated by the rejected application of Samuel Ayres, February 16, 1860. On a recent visit to Washington, I examined the reference, and was entirely satisfied of its sufficiency. Mr. Earle, however, upon making examination into the date of Ayres' invention, became satisfied that he was prior in point of time himself. and has submitted the affidavit upon the point herewith enclosed.

It will appear from these affidavits that Mr. Earle conceived the idea of making an egg-beater which should have cutting edges to act upon the albumen of the egg, as early as the spring (February or March, 1859.) That at that time he procured patterns to be made by one Adin Barber; took these patterns in February to Mr. Joshua White, who made castings from them; which castings were taken to Mr. Stephen R. Clark to be finished up, before the 28th of March, 1859, as appears from charges in his books.

The original casting from one of these patterns is identified
61 in the testimony, and is sent to the office as an exhibit. It will be perceived that although the machine is evidently too cumbrous to be useful, it exhibits fully the idea of cutting edges to act upon the egg as set forth in Mr. Earle's specification. I therefore respectfully claim under the evidence that Mr. Earle anticipates the reference by at least a full year.

An examination of the file in Ayres' case will show that he made no claim to the feature of a cutting edge, but based his claim in the friction rollers used by him to give a rotary motion to the beater; and the claim in this form was anticipated by various other machines in use, and was therefore rejected. If the case of Ayres was still pending, I should ask for an interference; but he withdrew his application, and received back, under the act of 1836, twenty dollars of the fee. No interference can therefore be ordered with him, and I submit, therefore, that when the proof of priority in Mr. Earle by at

least a year, that the patent should issue to him unless otherwise anticipated.

Mr. Earle was, in fact, the inventor of the mechanical egg beater, he having given attention to the subject, and made a model of a plan before any machine for this purpose was patented. He, however, failed to prosecute his right in season, and must take the consequences. The model which has been sent, referred to in the affidavits, is part of the machine which he made, which was finished and stored away, he finding that it was too large to be of practical value.

I am, very respectfully, your obdt. svt.

B. F. THURSTON,
Attorney for Timothy Earle.

[Indorsed:] Rec'd and filed April 13, '63. J. T. F.

14*r*.

APRIL 14, 1863.

SIR: Your application for a patent for an egg-beater has had a second examination, and is again rejected on the reference previously given. Your argument and the affidavits have been duly considered.

62 The casting filed as an exhibit does not resemble in any particular the present application, nor that on which it was rejected, and cannot be admitted in this case. The present application neither shows nor describes any cutting edges, but says, "These cutters are simply pieces of sheet-tin or other suitable metal," and the edges are square or at right angles with the sides of the cutters, and are identical with those of S. Ayres, which you admit to be a good reference.

TIMOTHY EARLE,
Care of B. F. Thurston, Providence, R. I.

ROOM 8. FALES.

[Indorsed:] Brief I. Earle. 2d rejection April 14, 1863.—J. T. F.

In the matter of the application of Timothy Earle for Letters Patent for improvement in Egg-beaters.

To the Commissioner of Patents:

SIR: In conformity of section 3 of the act of Congress dated March 2, 1861, I hereby make application for an appeal from the decision of the principal examiner in the matter of my application for a patent for an improvement in egg-beaters, and request that the same may be heard by the examiners-in-chief, as provided by said act.

Very respectfully,

TIMOTHY EARLE,
Per B. F. THURSTON,
Attorney.

[Indorsed:] Appeal 844. Timothy Earle, egg-beaters. Rec'd and filed April 21, '63.—W. H. B. Argument enclosed.

Application of Timothy Earle, of Smithfield, R. I., for Letters Patent for improvement in Egg-beaters.

On Appeal before the Board of Examiners-in-Chief.

May it please your Honors:

The applicant in his specification claims as an improvement in machines of this kind, the use of cutting instruments as distinguished from wires, for the purpose of working the whites and yolks of eggs, and he asserts that "as the albumen of an egg consists of a peculiar thick, glairy substance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact, so well is this understood that housewives universally make use of the blade of a knife for the purpose."

63

His machine consists of a frame which is provided with a series of blades made of sheet-tin or other similar material. The machine is placed in a vessel containing the yolks or whites of eggs, and the frame made to revolve by any of the ordinary means.

The claim is:

"The use of a series of cutting edges, *a*, *a*, *a*, when attached to a frame, A, which is capable of being rotated substantially as described."

This application was rejected on the twenty-sixth day of December last, on account of its being anticipated by the rejected application of Samuel Ayres, February 16, 1860, and which clearly exhibits an arrangement of cutting edges similar to those in the applicant's machine. After an examination of this reference, Mr. Earle was advised that the reference was sufficient, to which he at once replied that the idea of the use of cutting edges had been entertained by him long before the application of Ayres, but that he had, from various causes, permitted the machine, which he built for experimental purposes, to remain until his present model, and that he could prove the fact satisfactorily.

It should be observed that Ayres withdrew his application, and received back twenty dollars; and his claim was not for the cutting instruments, but to the peculiar means which he employed to rotate his beater; Ayres had therefore had no application pending, or patent with which an interference could be ordered; Mr. Earle is nevertheless entitled to a patent, if the invention, as claimed, is novel, and if he proves priority to Ayres.

He does prove this priority, I respectfully submit, by the affidavit of Barber, White, and Clark, who show by reliable evidence—and they are men of the first respectability in their employments—that Earle made the invention as early as the spring of 1859.

64

I agree that the machines described in these affidavits, and the cutters of which are shown in the exhibit filed, was a clumsy contrivance, and it is not strange that Mr. Earle permitted it to rest as an experimental machine; but nevertheless, if the new thing is the same in substance and principle as that claimed in the application, it is enough.

The examiner upon a reconsideration of the case after the model and affidavits were filed, rejected the application again, on the ground that the tin blades in the model with the application were not the same thing in substance as the cutting blades shown in the exhibit.

Now I have respectfully to submit, that the examiner is in this respect in error; I claim that if the exhibit in the machine to which it belonged had been made the subject of a patent with a claim to the use of cutting edges for working eggs, such patent would have been infringed by both Ayres' machine and a machine built upon the model filed with this application. It certainly is not of importance so as to constitute a substantial difference that the edges of the tin blades are not brought to a fine edge; the point is the use of a cutting edge as distinguished from a round wire. Every one appreciates that a smart blow upon the hand with a strip of tin so as to strike edgewise will produce a gash or cut, while a blow of the same force with a round wire, struck under the same advantages, will produce only a bruise. The edges of the blades, although at right angles theoretically to the sides, are yet cutting edges. A knife is no less a knife because its edge has become blunted; and if the *effect* upon a material from the action of the edge of a blade of tin is to cut it, while the action of a wire is only to bruise, or at most, if the material be a fluid of the character of the white of an egg, to agitate it, I respectfully submit that the rejection for the reason assigned in office letter of April 14, cannot be sustained.

I have already said that from the fact of the withdrawal of Ayres' application, no interference can be had with him, but his withdrawn application ought not to be a bar to an inventor before him; and I therefore request that as Mr. Earle shows a full year priority, that the patent may be ordered to issue to him when, if Mr. Ayres has any ground of complaint, he can contest it in a court of law. He certainly cannot do so before the office.

I am very respectfully, your obedient servant,

BENJ. F. THURSTON,
Attorney for Timothy Earle.

[Indorsed:] Appeal. Timothy Earle, Egg-Beaters. Rec'd and filed April 21, '63.—W. T. & B.

U. S. PATENT OFFICE, 19*th May*, 1863.

Application of Timothy Earle for a patent for an egg-beater.

On appeal to the Examiners-in-Chief.

The utensil in question consists of a frame formed of narrow strips of tin, and made to revolve around a splindle. It contains other strips of tin attached, all of which, as they revolve, cut the eggs. The whole revolves within another frame of tin, in which the spindle rests. The sole feature upon which the applicant relies,

is giving the different parts a cutting edge, which he effects by making them of tin, but which may be achieved by other means.

He was rejected upon a reference to the withdrawn application of Samuel Ayers, filed in February, 1860. The model shows an egg-beater upon a somewhat similar plan, formed also of strips of tin. But nothing was claimed upon this feature, the applicant in that case relying upon mechanism. As his application had been withdrawn, an interference could not be declared between it and the present one. Thereupon the present applicant filed affidavits showing that he had made the invention, and reduced it to practice, sometime before Ayers made his application. Notwithstanding, he was still rejected. By this it was apparent that he suffered injustice. Although he has shown that he is the first inventor, he is still denied a patent, and that upon grounds which do not conflict with his testimony nor impeach his title. The case ought not to be left in this situation, and his only remedy was by an appeal.

66 It is considered that there is error in the decision of the examiner, and it is reversed.

S. H. HODGES,
T. C. THEAKER,
J. J. COOMBS,
Examiners in Chief.

[Indorsed:] Timothy Earle's application. Decision of the examiners in chief. Rec'd and filed June 26, 1863. J. T. F.

$40.—*Bal. of Fee for 2 Appns.*

PROVIDENCE, *June* 23, 1863.

Hon. D. D. HOLLOWAY,
Commissioner of Patents.

SIR: Enclosed please find forty ($40) dollars to be applied as follows:

Twenty dollars for final fee on application of *Moses P. Milmarth* for letters patent for self-lubricating bolster for spindles, and—

Twenty dollars for final fee on application of *Timothy Earle* for letters patent for improved egg-beater, decided in Earle's favor on appeal to board of examiners in chief.

Very respectfully, your obedient servant,

BENJ. F. THURSTON,
Attorney for T. Earle and M. P. Milmarth.

844. $\frac{27\,37}{137}$

XX.

No. 39,134. Cones.

TIMOTHY EARLE,

Of Smithfield,
County of Providence,
State of Rhode Island.

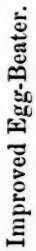
Egg-Beaters.

Rec'd, December 22, 1862.
Petition, " " "
67 Affidavit December 22, 1862.
Specification " " "
2 Drawings " " "
Model " " "
Cert. dep.
1. Cash $15, December 22, 1862.
1. Add'l fee, cash $20, June 25, 1863.
Examined by Ex. in Chief J. T. Fales, June 26, '63.
2. Issue H. McCormick, June 26, 1863.
3. Patented July 7, 1863 +
Recorded vol. 151, page 219.
Circular 1½ on

BENJ. F. THURSTON,
Providence,
R. I.

Egg Beaters.
Household.

E.
Rejected Dec. 26, 1862.
Ex'd. G. R.—Rejected April 14, 1863.



[Indorsed:] Timothy Earle, egg-beater.

68 Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, Joseph Gutman, Jr., examiner.

NEW YORK, *Sept.* 20, 1878, 11. a. m.

Present: THOMAS WM. CLARKE, ESQ., of counsel for complainants.
CHARLES F. BLAKE, ESQ., of counsel for defendants.

Deposition of Timothy Earle.

Direct examination by THOMAS WM. CLARKE Esq., of counsel for complainants.

Int. 1. What is your name, age, residence and occupation?
Ans. Timothy Earle; I am fifty-eight years of age; I reside at

Valley Falls, Providence county, R. I.; I am not engaged in any business at present.

Int. 2. Are you the patentee in letters patent granted to Timothy Earle for an egg-beater, dated July 7, 1863, No. 39,134?

Ans. I am.

Int. 3. When did you begin your work which led to the contrivance patented in that patent; and particularly when did you first make an egg-beater with cutting edges?

Ans. I began to place my mind on devices for egg-beaters in 1857—it was a year of prostration in everything—and my mind being active, I went at egg-beaters. The first one I made had a cutting edge; at least I called it so.

Int. 4. When did you make an egg-beater first which had thin blades?

Ans. I will say in 1859; it might have been sooner than that.

Int. 5. Please look at the egg-beaters now shown you, and say whether you ever saw them before, and when first, and who made them, if you know, and at what time.

Ans. I have seen them previously on several occasions; I saw them first in the latter part of 1859; I made them in the latter part of 1859.

69 Int. 6. Where have you been, if you know, since they have been made, or either of them?

[Complainants' counsel offers in evidence the two egg-beaters, and the same are marked "Complainants' Exhibit Original Earle, J. G., Jr., Spec. Exam.]

Ans. This one with the broken wheel has been in my possession until I recently gave it to Mr. Clarke; the other one I passed into the hands of Mr. Foss, of the Dover Stamping Company, a few years ago.

Int. 7. How do you fix the date of 1859 as the time when these egg-beaters were made?

Ans. Having commenced in 1857 on devices for egg-beaters, I went from one plan to another up to about the middle of 1859, when I conceived the idea of this device, and soon after carried it out.

[Cross-examination waived.]

T. EARLE.

Subscribed and sworn to before me, this 20th September, 1878.

JOSEPH GUTMAN, JR., *Examiner.*

Deposition of John M. Falconer.

Direct examination by THOMAS WM. CLARKE, Esq., counsel for complainants:

Int. 1. Please state your name, age, residence, and occupation?

Ans. John M. Falconer; over twenty-one years of age; Brooklyn, N. Y.; and am engaged in the house-furnishing hardware business at 13 Murray street, New York.

Int. 2. Were you acquainted in the year 1860 with Samuel Ayres, or the firm of Ayres & Child, of Worcester, Mass.?

A. Yes; I knew them.

Int. 3. During that year did you or any, and what, concern with which you were connected purchase any egg-beaters from said Ayres & Child; and if so, what became of them, and what were their appearance and characteristics?

70 Ans. Windle & Co., then doing business in New York, with whom I was engaged as clerk, had at least six dozen of them from Samuel Ayres; some of them were sold; when I succeeded to the said firm they were with part of the stock, and the balance, about three and a half dozen I think it was, I sold to Edwin P. Monroe, then of Newark, N. J., I think some time in October, 1875; they were made of iron, tin, india-rubber; they were like the egg-beaters in this case marked "Defendants' Exhibit Ayres Egg-Beater," and "Complainants' Exhibit Ayres."

Int. 4. Did you ever have any call for these egg-beaters after the year 1860?

Ans. We sold them as fast as we could; the Monroe beater came along and put this out of the market; one of the difficulties of this was its not operating; the rubber in the pinion got loose or shrunk.

JOHN M. FALCONER.

Subscribed and sworn to before me this 20th September, 1878.

JOSEPH GUTMAN, JR.,
Examiner.

Case on part of complainants closed.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

I, Joseph Gutman, Jr., an examiner in equity, duly commissioned, qualified, and sworn in the circuit court of the United States, second circuit, do hereby certify that the foregoing are the proofs taken before me on the part of the complainants, under and pursuant to the sixty-seventh rule in equity.

JOSEPH GUTMAN, JR.,
Examiner, &c.

New York, Sept 20, 1878.

Fees	$20 00
Witness	1 50
Clerk's fees, sub.,	50
	$22 00

Rec'd pay't. J. G., JR.

71 And on the 29th day of April, 1879, defendant's evidence was filed, in the words and figures following, to wit:

United States Circuit Court, District of Connecticut.

DOVER STAMPING COMPANY

vs.

THE TURNER AND SEYMOUR M'F'G CO.

THOS. WM. CLARKE, Esq.,
Counsel for Complainants.

SIR: Please take notice that on Tuesday, the 26th day of February, 1878, at 10 o'clock a. m., at my office, No. 7 Law Chambers, in the city of New Haven, before competent authority, I shall proceed to examine witnesses for the defendants. You are invited to attend for cross-examination.

JNO. S. BEACH,
Counsel for Defendants.

Received copy of foregoing notice.

THOS. WM. CLARKE,
Counsel for Complainants.

Evidence for Defendants.

Testimony taken on the part of the defendants under and pursuant to the 67th rule of the Supreme Court of the United States as amended, before John B. Mills, notary public, pursuant to notice and by consent of parties.

NEW HAVEN, *Feb.* 26, 1878, 10 o'clock a. m.

Present: Thos. Wm. Clarke and F. F. Raymond, Esqrs., counsel for complainants, and John S. Beach, Esq., counsel for defendants.

72 SAMUEL AYRES, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn to interrogatories propounded by John S. Beach, Esq., counsel for the defendants, answered as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Samuel Ayres; age 59; residence, Worcester, Mass.; occupation, I have no special business at the present time.

Int. 2. Were you at any time engaged in the business of manufacturing and selling wire goods: and if so, when did you begin and when did you cease to be so engaged.

Ans. I have been. I commenced in the year 1845 or thereabouts, and sold out my interest in the business in the fall of 1860.

Int. 3. I do not care to go into the early history of the business. For the two or three years prior to the fall of 1860 was the business conducted by you individually, or as a member of a partnership; and if the latter, what was the name of the firm, and who were its partners?

Ans. Partnership. The name of the firm was Ayres & Childs. The partner was Norman B. Childs.

Int. 4. Can you give the month in the fall of 1860 when that partnership ceased to exist?

Ans. It was either in September or the forepart of October. I would not be positive whether we closed it in September or October. It was one of the months.

Int. 5. What became of your interest in that firm?

A. I sold it to John W. Howe, of Worcester, Mass.

Int. 6. Where was the business of the firm of Ayres & Childs carried on?

Ans. Worcester, Mass.

Int. 7. Do you know whether the business was continued after your sale to Mr. Howe; and if so, under what name?

Ans. It was continued under the name of Childs & Howe.

Int. 8. Was the Mr. Childs of that firm the same one who had been your former partner?

Ans. He was.

Int. 9. Prior to the sale of your interest to Mr. Howe had the firm of Ayres & Childs made and sold egg-beaters?

Ans. They did.

73 Int. 10. Please look at the egg-beater now shown you and say whether you recognize it as one of the egg-beaters made by that firm?

Ans. I recognize it as one that we made—Ayres & Childs—the identical thing.

[The egg-beater is put in evidence and marked Defendants' Exhibit, Ayres' Egg-beater.]

Int. 11. If you know, say who invented this form of egg-beater, and when?

Ans. I invented it, and in the winter of 1860.

Int. 12. Can you fix any date prior to which you made the invention?

Ans. I can; it was previous to February 18, 1860.

Int. 13. How do you fix this date?

Ans. I fix it from the fact that my application for a patent on it was rejected at that time.

Int. 14. Can you give us some idea of the extent of the manufacture and sale of such egg-beaters by the firm of Ayres & Childs during the year 1860, and prior to the sale of your interest to Mr. Howe?

Ans. The number of hundreds I could not tell exactly.

Int 15. How were they designated on the bills of sale and invoices and in the entries of charges on the books?

Ans. We designated them as "patent egg-beater."

The defendants' counsel puts into the hands of the witness an account book purporting to be the ledger of the firm of Ayres & Childs, and Childs & Howe, and marked Defendants' Exhibit, Ayres & Childs and Childs & Howe ledger; and for the purpose of condensing the testimony, proposes to ask the examiner to prepare in the form of a schedule or table of five columns, the first of which is to be so headed as to indicate the page of the ledger; the second,

the date of sale; the third, the name of the purchaser; the fourth, the residence of the purchaser, and the fifth, the number of egg-beaters sold; and referring the witness to the pages of the account book, and the dates of sale, to which he desires to call the attention of the witness to ask him, without repetition of interrogatories, to give such information from said book as will enable the examiner to fill up the remaining three columns. If, however, the com-
74 plainant's counsel objects to this mode of inquiry, the defendants' counsel will make each item, to which he wishes to call the attention of the witness, a separate and independent subject of interrogation.

No objection being made to this method, the examiner prepares the following table and proceeds to fill up the columns thereof, as proposed, under dictation of the witness, and the schedule, it is agreed, is to be considered an answer by the witness to an interrogatory numbered 15½.

Date.	Page.	Names of Purchasers.	Residence.	No.
May 15	129	Mowry & Smith	Boston	12
17	68	Lyman Drury	Worcester, Mass.	6
18	68	" "	" "	6
21	179	Spaulding & Boynton	Nashua, N. H.	5
24	28	David Breck	Hartford, Conn.	6
25	122	A. L. Halstead & Son	New York	24
28	159	Bosmers & Saywood	Skowhegan, Me.	6
31	107	John A. Powers	Milford, N. H.	6
June 9	9	Dennison Dewey	Montpelier, Vt.	6
9	156	A. D. Smith & Boyd	Portland, Me.	6
12	56	James Gough	Windsor Locks, Ct.	6
13	297	A. G. Garfield	Chicago, Ill	6
14	165	A. T. Taft	White River Village, Vt.	6
19	62	Williams & Morandy	Boston, Mass.	12
20	155	R. J. DuBois	Northfield, Vt.	6
20	120	Bliven & Mead	New York	24
22	243	Ward & Knapp	"	24
25	125	Edwin D. Bassford	"	12
28	456	Shield & Bros	Philadelphia	24
July 2	218	S. J. Geer	"	144
3	224	B. P. Cummingham	Providence, R. I.	12
28	191	French & Adams	Boston, Mass.	4
30	262	Waterman & Co	"	6
Aug. 3	248	C. Foster & Co	Worcester, Mass.	12
21	124	Pennel & Gray	Bath, Me.	6
21	121	Willard Walker	"	6
22	113	A. G. Page	"	6
23	205	Bradley & Son	Lynn, Mass.	6
24	136	J. B. Dingley	Gardner, Me.	3
Sept.	60	Allen & McElwin	Springfield	12
11	396	A. F. H. Hartley	Gloucester, Mass.	12
15	456	Shield & Bros.	Philadelphia	24
21	196	John F. Soloman & Son	New York	36
22	64	O. A. Skilton	Northampton, Mass.	6
29	68	Lyman Drury	Worcester, Mass.	72
Oct. 13	81	C. C. Gates	Woonsocket, R. I.	6
26	25	Stephen P. Sawyer	New Bedford, Mass.	6
Dec. 25	70	Bridgman & Peabody	Boston, Mass.	12

Int. 16. In giving the examiner the number of egg-beaters to enable him to fill out the 5th column of the schedule, you
75 have called them off from the books as "patent egg-beaters." Are they in each instance so designated upon the ledger?

Ans. They are.

Int. 17. How did the egg-beaters mentioned in this schedule that were sold by the firm of Ayres & Childs compare in structure with the egg-beater marked defendants' Exhibit, Ayres egg-beater?

Ans. They appear to be the same thing.

Int. 18. If there was any difference between the egg-beaters mentioned in this schedule that were sold by the firm of Ayres & Childs and this exhibit, please state what that difference was.

Ans. There was no difference that I see. They were the same.

Int. 19. In whose handwriting are these entries to which your attention has been called?

Ans. Norman P. Childs.

Int. 20. Is he living or dead; and, if the latter, about how long since he died?

Ans. He is dead; I should judge it was some dozen years; I could not speak definitely without looking up the matter.

Int. 21. Independently of the entries in this ledger, what recollection have you of selling or putting on the market for sale, during the summer of 1860, egg-beaters like the one marked Defendant's Exhibit, Ayres egg-beater?

Ans. I went personally to the markets myself and sold them.

Int. 22. I see by the schedule that between the 20th June and the 3d of July, inclusive, there were sales made to Bliven & Mead, of New York; Ward & Knapp, of New York; Edwin D. Bassford, of New York; Shields & Bros., of Philadelphia; S. J. Geer, of Philadelphia; B. P. Cunningham, of Providence—aggregating in number 240. Can you give any explanation of these comparatively large sales during this period?

Ans. Owing to my personally seeing them; I went to see them; it was my custom to go to the market occasionally, and I saw them and made these trades with them.

Int. 23. Did you see each of these firms or persons at the places respectively where they carried on their business?

Ans. I did.

Int. 24. In what business was the firm of Bliven & Mead engaged?

76 Ans. They were hardware dealers.

Int. 25. What was the business of Ward & Knapp?

Ans. They were jobbers and dealers in fancy goods, wooden ware, etc.

Int. 26. What was the business of Edwin D. Bassford?

Ans. They kept a housefurnishing store.

Int. 27. What of Shield & Bros.?

Ans. They were manufacturers and dealers in wire goods.

Int. 28. What of S. J. Geer?

Ans. In the winter season his business was peddling honey; in the summer he peddled our wire goods and some other articles.

Int. 29. What of B. P. Cunningham?

Ans. Partly housefurnishing goods, carpets, etc., I think.

Int. 30. What makes you think that all of these so-called patent egg-beaters were of the same structure as the exhibit marked Defendants' Exhibit Ayres Beater?

Ans. We never made any only from one set of moulds.

Cross-examination by THOS. WM. CLARKE, Esq., counsel for complainants:

Cross-int. 31. Do you know where the day book of the firm of Ayres & Child now is?

Ans. I do not.

Cross-int. 32. Was the first delivery of egg-beaters made on the 15th of May; I refer to the things designated as "patent" egg-beaters?

Ans. I could not tell you.

Cross-int. 33. Who was the firm of Mowry & Smith?

Ans. I could not tell you anything further than that; that is all I knew of it.

Cross-int. 34. Who was Lyman Drury?

Ans. One of the citizens of Worcester.

Cross-int. 35. Did you deal largely with him while you were in the business?

Ans. Not very extensively.

Cross-int. 36. Will you please look at the item in
77 Lyman Drury account on page 399, the fourth line of writing from the end in right hand column and tell me what it is?

Ans. It reads "3 dozen patent" I should think. It looks like "poppers" but appears to mean beaters, undoubtedly egg-beaters.

Cross-int. 37. The word "egg" is in that item is it not?

Ans. Yes, sir.

Cross-int. 38. Did you have much dealings with the firm of Spaulding & Boynton?

Ans. About the same as with other outside customers in small towns.

Cross-int. 39. The whole account for the year 1860 was $20.45, was it not, in two sets of items; one in May for $15.20; on which there was paid in May $3.20; the other in December for $5.25; and there was collected in the subsequent March by Mr. Chamberlain the balance of the whole account for 1860?

Ans. I can't tell you whether this is the whole account or not. It seems that the settlement is here as reported but whether it is the whole year's account I cannot tell you. If it is, it is correctly recited in the question as appears on the book. So far as I know that is all the account that appears with them on this book.

Cross-int. 40. The account of A. L. Halstead & Son was settled by note in Nov., 1860, wasn't it?

Ans. It appears so on the book. That is all I can say about that.

Cross-int. 41. The account of Bosmers & Saywood was settled in December, with an allowance of $1.28 discount, was it not, and only consisted in all of $23.88, from August 28th to Christmas, so far as shown by the books?

Ans. That is so here, and I suppose it to be rightly cited.

Cross-int. 42. How does it happen that the item in the case of John A. Powers, for November 16th, 1860, precedes the item for August 31st, 1860?

Ans. I think what is intended for August 31st is January. This matter was settled after I left the concern. I can tell you nothing about it.

Cross-int. 43. How does it happen then that the item for Nov., 1860, precedes the item for what you say is January, 1860?

78 Ans. I think that there must have been a mistake of 1860 for 1861, as on the opposite page it is settled in 1861.

Cross-int. 44. Why then does the item for Dec. 19th, 1860, follow the item which you say is January 31st, 1861, the account being settled in March, 1861, to include both of those two items?

Ans. It occurs to me that this all was brought about by the return of the memorandum books of the peddlers; it occurs to me that this is the peddlers' account; they were gone three or four weeks often.

Cross-int. 45. Why then did you read to the magistrate this item, which you now say is for January 31st, 1861, as an item for May 31st, 1860?

Ans. It didn't occur to my mind in relation to these memorandum books at the first.

Cross-int. 46. Upon examination of that date, which do you think it is—May 31st, 1860, January 31st, 1861, or what?

Ans. That looks to me to be January; without doubt, in my mind, it is so, but I can't tell you anything positively about it.

Cross-int. 47. The Dennison Dewey account amounted to $53.50 on June 20th, and was settled by acceptance, October 26th, 1860, wasn't it?

Ans. It was, according to this book.

Cross-int. 48. The Smith & Boyd account amounted to $29.18, and it was settled in November, 1860, wasn't it?

Ans. It is what the book says.

Cross-int. 49. The whole bill of Gough of June 12th, amounted to $6.50, and was not settled till September, and there appears to have been a discount allowed; is not that the state of the books?

Ans. Yes, sir.

Cross-int. 50. The Garfield account was settled in August, wasn't it, and more discount allowed on it than the price of the egg-beaters, the account being $37.82; is not that the state of the books?

Ans. Yes, sir.

Cross-int. 51. The Taft account was to be a three months'
79 credit, but wasn't settled for six months, being $12.50 in all; isn't that the state of the books?

Ans. I don't know what that means, but probably it seems that that is the statement of the book here.

Cross-int. 52. What is the meaning of the word "Expt." written over the egg-beater charge of June 19th, in the Williams & Morandy account.

Ans. I think it means express—sent by express.

Cross-int. 53. How came you in an affidavit, previously filed in the case by you, to mention Williams & Morandy as having received some of these egg-beaters on May 15th, and not mentioned them now as having received them on that date?

Ans. I went only by the books here. I think I stated that I did'nt know about it. I hadn't seen the books when you asked me before. It is evident here that they received them.

Cross int. 54. Will you read the line across the page, beginning in the left hand margin, May 15th, 1860, in the Williams & Morandy account?

Ans. "To one dozen patent egg-beaters, five dollars. Returned goods, five dollars."

Cross-int. 55. The whole account of Williams & Morandy that appears on the books is $20.00 debit and $20.00 credit—$5.00 credit for returned goods, and forty-five cents discount, isn't it?

Ans. Yes, sir.

Cross-int. 56. The DuBois account had only one bill of goods of $36.98, which was paid in January, 1861. Isn't that the state of your books?

Ans. It is.

Cross-int. 57. Bliven & Mead account for this date contains only the egg-beater item, and was settled in September by two items, one of which was cash, $6.56, and the other, $2.44, does not seem to have any mark. Isn't that the state of your books?

Ans. Yes, sir.

Cross-int. 58. Do you know whether that unmarked item of $2.44 was a discount or not?

Ans. I do not.

Cross-int. 59. The only item in the Bassford account is the
80 egg-beaters, not pai for till November, on which a discount of $1.10 was allowed. Is not that the state of your books?

Ans. It is.

Cross-int. 60. In the settlement of the Shield & Bro.'s account, from May to September, 1860, amounting to $81.05, made on October 10th, 1860, an allowance of discount more than the price of the egg-beaters was made. Is not that the state of your books?

Ans. It is.

Cross-int. 61. In closing the Geer account, to include September, 1860, the debits from the 22d of May to the 4th of September, in six

bills of goods amounting to $749.38, didn't they, and the credits to $708.81 on those accounts, and the last item in the credit on October 17th, 1860, is by discount to balance account on "en lot;" isn't that the state of your books?

Ans. I should think it was.

Cross-int. 62. The price charged for egg-beaters was $36.00, was not it?

Ans. Yes, sir.

Cross-int. 63. Discount allowed was over forty, wasn't it?

Ans. It so appears.

Cross-int. 64. One of the items of credit in the French & Adams account is by cash and merchandise delivered Kingsbury, $9.42, isn't it?

Ans. Yes, sir.

Cross-int 65. Do you know who Waterman & Co. were, of Boston? Were they the well-known kitchen furnishing goods people, formerly Nathaniel Waterman?

Ans. I know there was such a firm there, but whether they were the successors of Nathaniel Waterman or not I can't tell you.

Cross-int. 66. They returned the egg-beaters, didn't they?

Ans. I could not tell you.

Cross-int. 67. What does the book say in the credit item of their account; don't it say "retd K?"

Ans. I should think it did.

Cross-int. 68. What is the second item of credit in the pay-
81 ment on the August bill containing the egg-beaters of C. Foster & Co.?

Ans. One pair pliers d'v'd Ayres 1.17.

Cross-int 69. Pennel & Gray had a credit till January on their account, didn't they?

Ans. It seems it was not settled until that time, by the books.

Cross-int. 70. The William Walker account was settled at .25 on a dollar, wasn't it?

Ans. That is what the book says.

Cross-int. 71. The Bradley & Son account was allowed a credit till the first of January, wasn't it?

A. I don't see why it was not, according to the book.

Cross-int. 72. They finally failed, didn't they, according to the book?

Ans. It is put down profit and loss, and I should judge it was a failure.

Cross-int. 73. Dingley got a ninety-nine cents discount on his bill of $12.26, didn't he?

Ans. That is what the book says.

Cross-int. 74. In the Allen & McElwin account the only debit item is the egg-beaters, and the credit item is "Dec., 1861, dlv. Chamberlain $5.00," are they not?

Ans. That appears so here.

Cross-int. 75. Hartley was allowed a credit till May, wasn't he?

Ans. It seems that it was not settled till that time.

Cross-int. 76. Solomon & Son's account went to profit and loss, didn't it?

Ans. It is so marked on the book.

Cross-int. 77. C. C. Gates didn't settle till July, 1861, and then paid by a stove, didn't he?

Ans. It appears so on the book.

Cross int. 78. Sawyer, of New Bedford, was allowed three months time, wasn't he, and then took nearly seven months more to pay fourteen and one-half per cent., and had the balance of his account charged to profit and loss; isn't that the state of your book?

Ans. It so appears on the book.

Cross-int. 79. When the open account of Bridgman & Pea-
82 body, in which the egg-beaters was charged, was closed, a discount of $8.22 was allowed to force the balance of $64.90, wasn't it, according to your books?

Ans. There is a discount of $8.22. I don't know what it was for, and the whole bill was $64.90.

Re-direct examination by John S. Beach, Esq., counsel for the defendant:

Re-direct int. 80. What was the whole amount of the Sawyer account to which your attention has just been called by cross-int. 78?

Ans. The footing says $25.97.

Re-direct int. 81. What proportion of that amount appears to be for patent egg-beaters?

Ans. Two dollars and a half.

Re-direct int. 82. What was the business of C. C. Gates to whose account your attention has been called by cross-int. 77?

Ans. I could not tell you.

Re-direct int. 83. What was the usual credit given by the firm of Ayers & Childs on goods sold by them?

Ans. Anything that we could agree upon under six months.

Re-direct int. 84. You were asked by cross-int. 71 if there was allowed a credit on the account of Bradley & Son until a certain time, and answered that you did not see but that it so appeared by the books. Please read the entry from which you make the inference that there was any contract as to the length of credit given?

Ans. Paid Jan. 1. Expes.

Re-direct int. 85. In answering the int. No. 15½ did you dictate to the magistrate the names of any purchasers of patent egg-beaters otherwise than those which appeared upon the page and under the date to which your attention was especially called by the counsel as showing sales of patent egg-beaters?

Ans. I don't know that I did.

Re-direct int 86. I do not desire to call your attention to each account which has been made the subject of inquiry on cross-examination, but for illustration refer you to the Garfield account, will you please say of how many items that account consisted?

Ans. I make twenty-six items.

83 Re-direct int. 87. How many of these items are for patent egg-beaters?

Ans. I don't see but one.

Re-direct int. 88. Do you know upon which, or how many, of said items the discount of $2.35 was allowed?

Ans. I do not.

Re-direct int. 89. Please look at the Geer account, to which your attention was called by cross-interrogatory 61, and say of how many items that account consists between the dates referred to in the interrogatory?

Ans. Thirty-three.

Re-direct int. 90. How many of those items are for patent egg-beaters?

Ans. I don't find but one.

Re-direct int. 91. Do you know upon which or how many of the items the discount referred to in cross-interrogatory 61 was applied?

Ans. I do not.

SAMUEL AYRES.

Subscribed and affirmed to, this 27th day of February, 1878, before me,

JOHN B. MILLS,
Notary Public.

JOHN W. HOWE, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn, to interrogatories propounded by JOHN F. BEACH, Esq., counsel for the defendants, answered as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. John W. Howe; age, 56; residence, Worcester; occupation, manufacturer of wire goods.

Int. 2. How long have you been engaged in that business?

Ans. Since the fall of 1860.

Int. 3. And at what place?

Ans. Worcester, Mass.

84 Int. 4. Were you in the fall of 1860 a partner of Norman B. Childs; and if so, how and when did you acquire your interest in that firm?

Ans. Some time in September or October I bought Mr. Samuel Ayres' interest in the business.

Int. 5. And after such purchase what was the firm name under which the business was conducted, and for how long?

Ans. The name of Childs & Howe; for about three years.

Int. 6. What were the terms of the purchase of the interest of Mr. Ayres, so far as related to his interest in the debts due to the old firm of Ayres & Childs, and to his liability for the debts due from that firm?

Ans. I assumed the liabilities and received the assets of the firm.

Int. 7. Were the open accounts due to the old firm included among those assets?

Ans. They were.

Int. 8. Do you recognize the book now shown you; and if so, will you please state what it is?

Ans. I do; it is the ledger that was kept at the time I bought in; the accounts of the firm were in this ledger.

Int. 9. What use was made of the book after you bought in?

Ans. During Mr. Childs' remaining in the firm it was kept as the ledger of the firm of Childs & Howe.

Int. 10. In whose handwriting are the entries in that ledger?

Ans. Mr. Childs' handwriting.

Int. 11. Where has this book been since the dissolution of the firm of Childs & Howe?

Ans. In a private safe of my own.

Int. 12. What became of the day-book, if there was any, and the other account books used by the firm of Childs & Howe?

Ans. I could not say; at the time of the sale all the accounts were taken out and placed in a new ledger; the small books I do not know what became of them.

Int. 13. How long since you have seen any of those old books from which the entries were copied?

Ans. I have no recollection of seeing them from the time they were copied.

The book shown the witness is marked Defendant's Exhibit Ayres & Childs and Childs & Howe's Ledger.

85 Int. 14. Please look at the exhibit now shown you, marked Defendant's Exhibit, Ayres' Egg-Beater, and if you recognize it, state what it is or what it represents.

Ans. I recognize it as the Ayres' patent egg-beater, which came into my possession when I bought Mr. Ayres' interest in the business.

Int. 15. Did the new firm of Childs & Howe make any sale of such egg-beaters?

Ans. They did.

Int. 16. Do you know how they were designated in the bills of sale and in the entries of sales made on the books?

Ans. As patent egg-beater.

Cross-examination by F. F. RAYMOND, Esq., of counsel for the complainants:

Cross-int. 17. How many kinds of egg-beaters were manufactured by the firm of Childs & Howe?

Ans. I think there were three kinds.

Cross-int. 18. Will you please describe them?

Ans. There was one article that we called flat egg-beaters, with a wooden handle, with the end quite projecting, with a knob, holes drilled in that wire, the points put in, bent in a circle with a cross-

bar, that was what we called the flat egg-beater. There was another we called the spoon egg-beater, which is shaped very much like a spoon, some with wooden handles, some with wire handles. Then there was a larger beater that we called the round egg-beater, used for hotels and shipping—we sold them mostly, for they were somewhat larger—hole drilled in the end of a wooden handle, and made someting in the form of a cone—the wire part. That is, the three kinds of egg beaters that Childs & Howe used to make.

Cross-int. 19. Can you give me any idea of the number of dozen you sold annually of the three kinds you have mentioned?

Ans. I could give no accurate idea. I could give something approximating and somewhere near.

Cross-int. 20. State as nearly as you can.

86 Ans. I should think of the spoon egg-beaters we sold 100 gross yearly. It might be more, it might be less. The flat egg-beaters perhaps not more than one-fourth part as many. The round egg-beaters not so many as the flat.

Cross-int. 21. Have you an inventory of the number of egg-beaters like the Exhibit Ayres Egg-beater which the firm of Childs & Howe purchased from the firm of Ayres & Childs in September or October, 1860?

Ans. I have not.

Cross-int. 22. Have you any idea of the number so purchased; state to the best of your recollection?

Ans. I have nothing in my mind that I could tell exactly or near; from six to twelve dozen as near as my recollection serves me.

Cross-int. 23. Did your firm sell all the said egg-beaters so received from the firm of Ayres & Child during the year 1860?

Ans. I think they sold all that were put together; there were some castings and parts that came into my hands that were never put together.

Cross-int. 24. What became of those castings and parts, and why were they not put together?

Ans. I have some of them in my possession; the reason that they were not put together was that we did not think they were worth anything; not in the condition in which they were.

Cross-int. 25. Please indicate by reference to your ledger all the egg-beaters sold by the firm of Childs & Howe, from the date of purchase from Ayres & Childs to December 31, 1860, inclusive?

Ans. I should not be able to do it; I can't fix the date without I go home, that I bought in.

Cross-int. 26. Have you the ledger of Childs & Howe in your hand, and does that ledger cover the period inquired in the last interrogatory?

Ans. I have; it does cover the period.

Cross-int. 27. Will you please refer to said ledger commencing September 1, 1860, and state the entries of all egg-beaters sold to January 1st, 1861?

Ans. It would be an impossible thing for me to do it without

spending a good deal of time; the entries are so mixed on the ledger it would be impossible to do it.

87 Cross-int. 28. Will you cause to have prepared and have filed in this case a copy of all the entries relating to egg-beaters of each and every kind manufactured and sold by the firm of Ayers & Childs or Childs & Howe, from September 1, 1860, to January 1, 1861.

Defendant's counsel objects to any such requirement from the witness, but offers to submit the book for such purpose to complainant's counsel, or to such expert as he may designate.

Ans. If the time can be given I can do so if necessary.

Cross-int. 29. How much time do you require?

Ans. I could not tell; the state of my health is such that I should not attempt it myself; any expert can look it over.

Complainant's counsel notifies witness to have prepared a schedule of the entries indicating all egg-beaters sold by the firm of Ayres & Childs and Childs & Howe between September 1st, 1860, and January 1st, 1861, to be used at final hearing of said cause, and to be filed within thirty days from date; notice is not limited to the so-called "patent" egg-beaters, but includes the three kinds he has described.

Cross int. 30. How many of these egg-beaters that you have mentioned were patented?

Ans. None of them that I have described.

Cross-int. 31. Who sold the egg-beaters like Exhibit Ayres Egg-beater to Allen & McElwin of Springfield?

Ans. I do not recollect.

Cross-int. 32. Did said firm of Allen & McElwin ever give you a second order for egg-beaters like Exhibit Ayres' Egg-beater?

Ans. I do not recollect.

Cross-int. 33. Would not your ledger show such order if such order were filled?

Ans. It would if it was filled direct; at the time that I bought in there were one or two men who were traveling; they were inventoried to peddlers; if they had them in their carts and were to supply an order, it would not come in direct, and would not be on the ledger.

Cross-int. 34. Under whose names would such order or orders be entered on your ledger?

88 Ans. It would not be entered on our ledger at all, if it was filled by one of these traveling men; it would only be a memorandum; when they came in with these books it would be credited to them there.

Cross-int. 35. Would not said sales be charged anywhere on your books to the parties purchasing?

Ans. They would be charged on the memorandum book, not on the ledger.

Cross-int. 36. Why not on the ledger?

Ans. Each of those traveling men had a little memorandum book separate. They made their own collections.

Cross-int. 37. Were they not charged with the goods delivered to them and credited with the cash paid by them for merchandise purchased by them of your firm.

Ans. They were not. There was no sales made to those individuals.

Cross-int. 38. To whom were the sales made and charged on your books?

Ans. There were no sales made. There was a memorandum kept of the goods that were taken. The goods were returned—either goods or money returned—to satisfy the amount taken.

Cross-int. 39. Have you said books in your possession or the possession of the firm; and if so, will you please produce them for examination as exhibits in this case?

Ans. I have not those books, and have not seen them this dozen years.

Cross-int. 40. Where are they?

Ans. I do not know.

Cross-int. 41. Who had them last?

Ans. I could not say who had them last. I have not seen them since Childs sold out.

Cross-int. 42. Where did you last see them?

Ans. I saw them at the shop in Worcester where the goods were manufactured, when they were loading goods. Mr. Childs attended to that part of the business.

Cross-int. 43. Who succeeded the firm of Childs & Howe?

Ans. A brother of mine. The name of the firm was J. W. Howe & Co.; my brother's name was Joel Howe.

Cross-int. 44. When did he so succeed your firm in the business?

89 Ans. I think in the fall of 1863.

Cross-int. 45. Were said books turned over to said Howe at the time of the sale?

Ans. They were not.

Cross-int. 46. How do you know they were not.

Ans. From the fact that everything was drawn off from this ledger and the cash books at that time. Mr. Childs being bookkeeper reserved all the little memorandums for his personal use.

Cross-int. 47. Can you swear that said books were not so delivered, but were kept by Mr. Childs in his possession?

Ans. I can swear that they never were delivered. They might have been burned. I don't know what he did with them.

Cross-int. 48. Who were the men with whom these accounts were kept in the memorandum books as you have stated? Give their names.

Ans. One of the names was A. L. Chamberlain. There were two others. I can't recollect their names now. They only stayed

with us a short time after I bought into the concern. Mr. Kingsbury, whose name has just come into my mind. What his first name was I don't remember.

Cross-int. 49. Were there any others so engaged besides those you have mentioned?

Ans. There was one other man.

Cross-int. 50. Are the said parties or either of them yet alive; and if so, will you give me their address?

Ans. Mr. A. L. Chamberlain is now residing in Worcester. Mr. Kingsbury I saw last fall. I think he was residing then in Warren. I have not heard from him since.

Cross-int. 51. As I understand you, all egg-beaters and other articles so sold by these traveling agents would not be of record on your ledger. Is that so?

Ans. It is so. There is no account on the ledger.

Cross-int. 52. Will you please state the number of egg-beaters like Ex. Ayres Egg-beater sold by these agents to the best of your recollection.

Ans. I could not recollect of any goods whatever to identify or specify any one article.

Cross-int. 53. Did they sell as many as ten dozen of said egg-beaters for your firm, to the best of your recollection?

90 Ans. I could not swear that they sold one.

Cross-int. 54. I didn't ask you to swear, I asked you according to your best recollection.

Ans. I have no recollection of their selling one.

Cross-int. 55. Of the twelve egg-beaters like Exhibit Ayres' Beater sold by your firm to Allen & McElwin, of Springfield, how many were returned to your firm or exchanged for egg-beaters of other construction or other articles?

Ans. I have no recollection of any being returned. I do not know but they were. I have no recollection about it.

Cross-int. 56. Please give the routes as nearly as you can recollect of these traveling agents.

Ans. They were not instructed when they started away from our place. They would take routes of their own choice. Some would go East and some West.

Cross-int. 57. State about the limit.

Ans. They have been as far west as Buffalo in one instance. Troy and Albany is about as far as they went west. On the eastern trip they would go to Boston, and up the coast as far as Dover and Manchester, and have been as far as Portland, I think.

Cross-int. 58. Will you please examine the ledger and other books of account of said Ayres & Childs and Childs & Howe, and state whether or not other beaters like the Exhibit Ayres' Egg-beater were ever sold to A. F. Harvey, of Gloucester, Sept. 11, 1860, other than that twelve you have mentioned.

Ans. I see nothing on the book to that effect.

Cross-int. 59. Will you please examine said ledger, and state

whether or not the said firm of Shield & Bros., of Philadelphia, have other beaters like Exhibit Ayres' Beater charged to them other than the twenty-four charged September 15.

Ans. I see nothing but two dozen patent egg-beaters. No other kinds

Cross-int. 60. Will you please examine the ledger of said firm, and state whether or not the account of John F. Soloman & Sons show more than one entry of patent egg-beater.

Ans. I see but one entry here.

Cross-int. 61. Will you please examine the account of O. A. Skilton in said ledger, and state whether or not there is more than one entry thereon.

91 Ans. I see but one entry.

Cross-int. 62. Will you please examine the account of C. C. Gates in said ledger, and state whether there is more than one entry of patent egg-beaters sold.

Ans. I see but one.

Cross-int. 63. Will you please examine the account of Stephen P. Sawyer in said ledger, and state whether there is more than one entry of patent egg-beater.

Ans. I see but one.

Cross-int. 64. Please examine the account of Bridgman & Peabody, and state whether or not you find more than one entry of patent egg-beater charged to them.

Ans. I see but one.

Cross-int. 65. Were not the egg-beaters or a portion of them so sold by your firm to the parties above named, like Exhibit Ayres' Beater, returned to your firm or exchanged for other articles from time to time?

Ans. I have no recollections of any being returned.

Cross-int. 66. They may have been, may they not?

Ans. I have no recollections about it; they may have been or they may not.

Cross-int. 67. From the fact that orders were never duplicated by parties purchasing said beater, like Exhibit Ayres' Beater, is it not probable that they were often returned or exchanged for other articles more salable?

Ans. It might be, and I could explain to you farther if I were permitted.

Cross-int. 68. Do you swear that all egg-beaters entered upon your ledger as "patent egg-beaters" were exactly like in construction the Defendants' Exhibit Ayres' Egg-beater?

Ans. I should say they were.

Cross-int. 69. Will you please give me the names of the parties in the employ of your firm at the time the said Defendants' Exhibit Ayres' Beater was sold, and the present residence of all now living?

Ans. Wm. F. Collyer is one, Joseph K. Barton, Henry Chamberlain, Fisk Higgins,—I don't think of any other men that

are now living; they live in Worcester, all of them; Henry
92 Chamberlain is not in Worcester; he is somewhere in Rhode Island, Woonsocket or Pawtucket.

Cross-int. 70. Was the Mr. Childs, your partner, the gentleman with whom Mr. Ayres was associated in business prior to your purchase of your interest in the concern?

Ans. It was.

Cross-int. 71. In answer to cross-int. 43 you say, "a brother of mine succeeded the firm of Childs & Howe." You mean, do you not, that he succeeded Mr. Childs and became a partner with you in the business?

Ans. That was my intention to give that meaning; that is my meaning.

J. W. HOWE.

Subscribed and sworn to, this 26th day of February, 1878, before me,

JOHN B. MILLS,
Notary Public.

Adjourned until Thursday, March 14th, 1878, at 10 o'clock a. m.

Hearing resumed Thursday, March 14th, 1878.

The defendant's counsel offers in evidence certified copy of the letters patent granted Timothy Earle, dated July 7, 1863, No 39,134, for improved egg-beater, and the same is marked Defendant's Exhibit "Earle Original Patent."

Also, certified copy of letters patent granted Eber C. Seaman, dated October 3d, 1848, No. 5,821, for "Imp't in Cream Freezers," and the same is marked "Defendant's Exhibit Seaman Patent."

Also, certified copy of letters patent granted P. A. Morley, dated June 19th, 1860, for improved egg-beater, No. 28,760, and the same is marked Defendant's Exhibit "Morley Patent."

The defendant's counsel, for the purpose, and for the purpose only, of showing the state of the act relating to egg-beater devices at the date of the claimed invention described in said original letters patent, offers in evidence:

Certified copy of letters patent granted Sylvanus Walker, dated January 24th, 1860, No. 26,958, for "Improved Egg-beater," and the same is marked "Defendant's Exhibit Walker Patent."

93 Also, certified copy of letters patent granted Uriah Baker, dated October 26, 1860, No. 30,453, for "Improved Egg-beater," and the same is marked "Defendants' Exhibit Baker Patent."

Also, certified copy of letters patent granted to Walter Hart, dated March 12, 1861, No. 31,663, for "Improved Egg-beater," and the same is marked "Defendants' Exhibit Hart Patent."

Also, certified copy of letters patent granted to David Shive, dated July 29, 1862, No. 36,030, for "Improved Egg-beater," and the same is marked "Defendant's Exhibit Shive Patent."

JOHN E. EARLE, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn, to interrogatories propounded by JOHN S. BEACH, Esq., counsel for the defendants, answered as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John E. Earle; age, 47; residence, New Haven, Conn.; occupation, solicitor of patents, and have frequently been examined as an expert in patent causes.

Int. 2. Have you examined the original letters patent issued to Timothy Earle, dated July 7, 1863, and also the reissued letters patent granted to the complainants as assignees of the said Timothy Earle, and do you understand the devices therein respectively described, and their construction and operation?

Ans. I have examined them both, and believe I understand the invention described and claimed in each.

Int. 3. Please look at the model now shown you, and, comparing it with the drawings of the reissued patent, say whether it is a correct representation of the device therein shown.

(Model put in evidence and marked Defendants' Exhibit Earle Patent Model.)

Ans. It correctly represents the devices therein shown.

Int. 4. I call your attention to the first claim of the reissued patent, which reads as follows: "The revolving beater frame, formed of thin, plain blades or cutters arranged to cut edgewise through the material by their rotation, substantially as described;" and in connection therewith I also direct your attention to the following exhibits: Defendants' Exhibit "Ayres' Egg-beater," Defendants' Exhibit "Morley Patent," and Defendants' Exhibit "Seaman Patent." To what extent, if at all, do you find in either of these exhibits the device recited in said first claim, and referring also, if you so desire, to the state of the art as it existed at the time of the alleged invention? Please give your reasons for your conclusions.

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Ans. Referring first to the state of the art I find that long prior to the Earle patent egg-beaters were well known, which consisted of a revolving beater-frame, and, in some cases, frames arranged to pass through the material by their rotation and substantially in the same manner as in the Earle patent; as, for instance, the Edwin P. Monroe patent, April 19, 1859, which consists of a pair of beater-frames, arranged to revolve one within the other, and in opposite directions through the material to be beaten. These beater-frames are composed of round wire, to that extent, and that only differing from the invention recited in the first claim of the Earle patent. (Plaintiff's counsel put in evidence in illustration of the state of the art as decribed by the witness, an egg-beater, marked Defendant's Exhibit Monroe Patent.) In the exhibit marked Defendant's Exhibit Walker Patent, I find an egg-beater of substantially the same construction, so far as the beaters are concerned, as the Monroe

patent, there being two beater-frames, one within the other, to revolve in opposite directions, and each of the beater-frames made of round wire, and therefore differing from the invention recited in the first claim of the Earle reissue only in the shape of the material of which the blades of the beater-frame are made. In Defendant's Exhibit Baker Patent, I also find two revolving beater-frames, one within the other, caused to revolve in opposite directions, the frames made from round wire, and to that extent only differing from the invention recited in the first claim of the Earle reissue. In Defendant's Exhibit Hart Patent, I find an egg-beater consisting of a single revolving beater-frame. This also is made of round wire. Referring now to the Defendant's Exhibit Ayres' Egg-beater, I find in this model a revolving beater-frame formed of thin, plain blades or cutters, arranged to cut edgewise through the material by their rotation, substantially, not to say identically, the invention recited in the said first claim of the Earle reissue. In Defendant's
95 Exhibit Morley Patent, I find an egg-beater having a central stationary shaft with a beater-frame arranged thereon and mechanism to cause it to revolve, the beater-frame made from thin flat strips of tin corrugated transversely and so as to present the edge advancing, but the metal inclined to the plane of revolution. This construction differs from the first claim of the Earle reissue only in the fact that the blades are corrugated instead of plain. The blades are arranged to cut edgewise through the material by their rotation, in substantially the same manner as required by the first claim of the Earle reissue. I take into consideration the fact that the Earle patent shows the blades as lying flat in the plane of the revolution, so that practically only the edge operates on the material, but I do not consider this particular arrangement as essential to the first claim, because the patent says that the blades "are all so placed that their edges shall cut the material to be agitated when the frame is revolved." In the Morley patent the same cutting edge is presented to pass through and cut the material, and the particular position of the blade I consider to be immaterial to the cutting properties of the knife-like edge, as whatever action the relative position may give to the blades it is and must be substantially to the effect produced by the knife-like edge. To illustrate the peculiar form of the beater-frame or blades in the Morley patent I offer a strip of tin corrugated as shown in that patent, the corrugations being at an angle to the longitudinal line, and showing the inclined position of the blade. (The illustration referred to by the witness is put in evidence and marked Defendant's Exhibit Morley Blade.) This Morley beater shows other blades made from the flat strips of tin twisted, but the principal beater-frame is corrugated. The corrugation, therefore, I find to be the only difference between the beater-frame of the Morley patent and the first claim of the reissue. In the specification of the Morley patent in defining the properties of the edge of the blade, says they are "fashioned from nar-

row strips of tin or other suitable metal. * * * The superiority of our arrangement of egg-beaters over those that are in common use is that by means of the twisted or corrugated strips of metal, the gelatine mass is beaten by the flat surfaces, as well as being broken or cut by the sharp edges
96 thereof." In Defendant's Exhibit Seaman Patent I find a device called an ice-cream freezer. In this there is a vertcal shaft caused to revolve by the application of power thereto, and this shaft is provided with radical blades presenting a sharp cutting edge to the material through which they are rotated, and at the outer end of these arms there is a vertical, thin, sharp edge plate which connects the several arms on one side to each other. The specification describes these radical arms as havtng a "knife-like edge." I take into consideration that this Seaman patent is for an ice-cream freezer, but I do not consider this essential, because if eggs be placed in this machine and the beaters revolved, the action of the sharp-edged blades will be substantially the same. I also take into consideration the fact that the blades in the Seaman patent are arranged at an angle to the plane in which they revolve, but for the reason before stated in regard to the same fact in the Morley patent. I do not consider this essential, and therefore find in the Seaman patent a revolving beater-frame formed of thin, plain blades or cutters arranged to cut edgewise through the material by their rotation. If, therefore, the first claim of the Earle reissue is to be construed broadly for a revolving beater-frame made from thin, plain blades or cutters, so arranged as to cut edgewise through the material by their rotation, then I find the invention in the Defendant's Exhibit Ayres' Model, Morley patent and Seaman patent.

Int. 5. Please look at the egg-beaters now shown you, marked Complainant's Exhibit B, and say whether you find if they contain the invention described and recited in the first claim of the Earle reissued patent.

Ans. If the said first claim is to be construed so broadly as to include a beater-frame formed of thin, plain blades or cutters, then I do find the invention recited in the first claim in the two egg-beaters. But if, on the contrary, the claim is to be construed to be for the cutters or blades described in the specification, then I do not find the invention in the said two egg-beaters. Referring to the specfication, I find the beater-frame is that portion of the device which forms the revolving frame immediately within the outer frame. The cutters or blades are then described. "The inner frame"
97 (which is the "revolving frame") "is further provided with a series of cutters or blades *a*, etc., arranged in any manner suitable for cutting through the fluid in many different planes. These cutters or blades are simply pieces of sheet-tin or other suitable metal of the width of the inner frame, and are attached to the same by their ends, as is shown, and they are all so placed that their edges shall cut the material to be agitated when the frame A is rotated." In neither of the exhibits of the Exhibit Egg-beaters,

Exhibit B, do I find a revolving beater-frame provided with a series of cutters or blades corresponding to the "series of cutters or blades *a a*," described in the specification and shown in the drawings.

Int. 6. Coming now to the 2d claim of the re-issued patent which reads, "The combination of the fixed frame which contains and supports the operative machinery provided with a fork or support at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described." Having in view the state of the art as it existed at the time of this alleged invention, what do you understand to be the invention recited in this 2d clause of claim?

Ans. I understand the invention recited in the 2d claim to be for a combination of five elements. 1st. A fixed frame which in its general outline corresponds to the beater frame within, and so that the operative mechanism comes within it, and is supported by it. 2d. A foot at the bottom of the frame so that the beater frame may rest on this foot stationary while the beater frame is revolved. 3d. A handle at the top by which to hold the beater; and 4th. A rotating beater frame within the fixed frame; and 5th. Mechanism for rotating the beater.

Int. 7. It is said that the frame of the defendants' egg beater, as shown in complainant's Ex. B, is that portion of the structure consisting of the outer revolving cutters and the stock to which the cog-wheel is attached. Do you find such a frame in the egg-beater shown in that ex., and if not, say why not, and if you have any model which will illustrate your meaning, you can put it in and refer to it in explanation?

Ans. I do not consider the second or outer beater in Ex. B as any part of the frame or substitute therefor, for the reason that it does not in any sense support any part of the mechanism,
98 on the contrary, it is itself supported by the frame above it, and the shaft around which it revolves. This is illustrated by detaching the outer beater so that it may be disconnected from the driving gear, then it will be observed that the inner beater and all the parts perform in precisely the same way as when it is in place. As a further illustration remove the inner beater from the shaft, then there would be the single outer beater supported by the shaft and frame, and revolving as do the beaters in the several exhibits. The only frame or support for the mechanism in egg-beaters shown in Exhibit B is the frame which is made a part of the handle and the shaft, the shaft serving to confine the outer beater. In no sense can the outer beater in Exhibit B be called a frame which contains and supports the operative machinery or any portion of it. The outer beater in Exhibit B is no more the supporting frame than is inner or revolving beater in the Earle patent.

Int. 8. Refering to the exhibits which have been put in evidence by the defendants, will you please state in which of them, if any, you find described egg-beater devices having a frame that is "fixed in the sense that it is of such a character as to enable the whole

implement to be held steadily by the hand of the operator instead of depending for its support upon an attachment to some stationary object"?

Ans. Such a structure I find in defendant's Exhibit Walker Patent, Baker patent, Hart patent, and in Defendants' Exhibit Morely Patent; also, Defendants' Exhibit Ayres Egg-beater is capable of the same mode of operation, and in addition possesses the property of being attached to some stationary object.

Int. 9. In which of the egg-beaters shown in these exhibits do you find a device for containing and supporting the operative machinery and constituting a frame in the sense that it confines the mechanism to the revolving beater upon which it operates, and in connection with the spindle supports said mechanism?

Ans. In Defendants' Exhibit Walker Patent, Baker patent, Hart patent, also in Defendants' Exhibit Morley Patent, Ayres Egg-beaters, and Defendants Ex. Monroe Patent.

Int. 10. Assuming that in Complainant's Exhibit B, the outer beater is equivalent for the fixed frame of the Earle patent, do you find the same device in any of the exhibits in the cause, and if so, in which?

99 Ans. In Defendants' Exhibit Walker Patent, Baker patent, and in Defendants' Exhibit Monroe Patent; in all these there is the same outer revolving beater with a beater within it attached to the shaft, and so that the shaft revolves with its beater in one direction and the outer beater in the opposite direction in the same manner as in Exhibit B.

Int. 11. In which of the devices shown in the defendants' exhibits do you find a foot in the sense that it is capable of forming; and, if so desired of being used as a support to rest upon the bottom of the vessel to support the lower part of the machine?

Ans. If the end of the revolving shaft as in complainant's Exhibit B is to be considered a foot or support on which the beater may rest while being operated, then I find the same foot in Defendants' Exhibit Morley Patent and in Defendants' Exhibit Walker Patent, Baker patent, and Ayres beater and Monroe patent; if by foot is meant a stationary foot, such as described and shown in the Earle patent, model, and drawings, and specifications, then I find such a foot in Defendants' Exhibit Hart Patent.

Int. 12. In which of the devices shown by the defendants' exhibits do you find a handle by which the machine can be held upright on the bottom of the vessel by one hand, while the beater is operated by the other?

Ans. Defendants' exhibits Walker patent, Baker patent, Morley patent, Hart patent.

Int. 13. Which of the devices shown in these exhibits constitute a separate detached implement which can be used in any vessel and without any mechanical fastening of the machine to the vessel or any other object?

Ans. The four mentioned in the last answer.

Int. 14. Say whether you find in the defendants' manufacture represented by complainants' Exhibit B, the combination described and recited in the 2d clause of the reissued patent, and give your reasons for your conclusions?

Ans. I do not; 1st. Because I do not find in the complainant's Exhibit B the fixed frame corresponding to the fixed frame *c* of complainant's patent; and 2d, because I do not find the foot of complainant's patent, as I understand that foot F to
100 be a part of the frame *c*, and on which the beater may be rested on the bottom of the vessel, whereas in complainant's Exhibit B, as in the other cases referred to, the lower end is a revolving part of the implement, and on which the instrument cannot rest stationary as on the foot of complainant's patent, and in the sense of the foot as found in complainant's patent, there is no foot in complainants Exhibit B; the difference I understand to be an essential one from the fact that if one of the implements in which the lower points revolve is set upon the bottom of the vessel as a support, the revolution will naturally cause the lower end to move about or travel on the bottom, and to that extent cease to be a practical support, whereas the stationary foot as in complainant's patent and in Defendant's Exhibit Hart Patent, the foot forms a stationary support or resting place, or practically a bearing on which the beater is made to revolve.

Int. 15. Have you compared the certified copy of the original letters patent, issued to Timothy Earle, dated July 7, 1863, No. 39,134, with a certified copy of the reissued letters patent, granted to Dover Stamping Co., assignee of Timothy Earle, No. 6,542, and if so, will you please point out what difference, if any, you find between the two?

Ans. In answer to this interrogatory, I say that I have and hand to the counsel a printed document compiled from the original patent and the reissue, in which the words in italics are not in the original patent, and the words enclosed in [ ] are in the original patent, and excluded from the reissue.

Defendant's counsel puts the document handed to him by the witness in evidence, and the same is marked "Defendants' Exhibit, original and reissued compared."

Cross-examination by THOMAS WILLIAM CLARKE, Esq., counsel for the complainants:

Cross-int. 16. Am I to understand you as expressing the opinion that the mechanism you describe in the Seaman patent as therein organized is a suitable mechanism for beating eggs?

Ans. It certainly would be; an ice cream freezer while gen-
101 erally a larger vessel than would be required for beating eggs in a family, the mechanism, if eggs in quantity sufficient are put into that freezer, and the machine operated, they would certainly be beaten, and I think well beaten, and as there is nothing in the patent to limit the size of the apparatus if it be made of suit-

able size for domestic purposes; I don't know of an egg-beater which I think would work any better than such an apparatus would.

Cross-int. 17. Would not the speed with which the blades are urged through the material if proper for the scraping and stirring operation to be performed on ice cream material without developing butter in it be rather slow for the beating of eggs, and would not the speed with which the blades are urged through the material in order to successfully cut and froth and aerate the egg matter be rather quick for the stirring up of ice cream without the development of butter?

Ans. I do not find anything in the patent that limits the velocity with which the beater and cylinder should be revolved, and therefore presume that that would be naturally left to the operator, as in either case, whether for ice cream or egg-beating, it must depend upon the judgment of the operator. In some conditions in beating eggs the beating is necessarily very much slower than in others, as for instance, in beating the yolks with sugar a very much slower beating will perform good results than would be done in beating the white alone, and I know of no rule or direction other than the judgment of the operator to govern the velocity with which the instrument is moved which beats the eggs or ice cream. The machine of Seaman is capable of any required velocity according to the work to be done by it.

Cross-int. 18. I understand from your last answer that the velocity of the movement of blades through the material to be agitated is immaterial to the result in either of the two cases, namely: the frothing of eggs and the freezing of ice cream. Is this the way in which you desire to be understood as replying to my question; if not, please reply to it?

Ans. You entirely misunderstood my answer, and I do not think it conveys any such impression. I have said that the velocity may be greater or less in the use of the machine, and the velocity
102 depends solely upon the act of the operator, and I have also said that in beating the whites of eggs a greater velocity is at least desirable than when beating the yolks with sugar, and that there is nothing in the Seaman patent which indicates whether the velocity is to be greater or less.

Cross-int. 19. Will you now please tell me whether the velocity for the successful agitation of ice cream in a freezer is in your judgment the same as that required for the successful aeration and frothing of eggs?

Ans. Taking into consideration the question of time if I had the work to do I should cause the beater to revolve very much faster in beating the whites of eggs than in stirring ice cream, but I am not prepared to say that the agitation or beating which would be given to eggs by the slow revolution would not bring the eggs to the desired condition. In practice, however, I should revolve the beater very much faster to beat eggs than to stir ice cream.

Cross-int. 20. Did you ever see an egg-beater made according to the construction shown in Fig. 2 of the Morley patent?

Ans. I saw the model in the Patent Office, which was a full-sized machine, and substantially like Fig. 2, as I remember it.

Cross-int. 21. That's the only one you ever saw, is it?

Ans. Yes, sir.

JOHN E. EARLE.

Subscribed and sworn to, this 14th day of March, 1878, before me.

J. B. MILLS, *Notary Public.*

103 *Defendant's Exhibit, "Original and Reissue Compared."*

Copy of reissued letters patent to Timothy Earle, in which the parts in italics are not in the original, and the parts enclosed in [ ] are in the original, and excluded from the reissue.

UNITED STATES PATENT OFFICE.

Timothy Earle, of Lincoln, R. I., assignor by Mesne assignments, to The Dover Stamping Company, of Boston, Mass.

IMPROVEMENT IN EGG-BEATERS.

Specifications forming part of Letters Patent No. 39,134, dated July 7, 1863; reissue No. 6,542, dated July 13, 1875; application filed June 8, 1875.

To all whom it may concern:

Be it known that I, Timothy Earle, of Lincoln, (*formerly Smithfield,*) in the county of Providence and State of Rhode Island, have invented [a] *certain* new and useful improvements in Egg-Beaters; and I do hereby declare that the following specification, taken in connection with the drawing, making a part of the same, is a full, clear, and exact description thereof.

Figure 1 is a view of the beater. Fig. 2 is another view of the same, with the rack which works it shown. Fig. 3 is a top view of the same.

Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process. One of these devices consists of two wire frames, one within the other, and made to revolve in opposite directions; another consists of a propeller-blade inside of a wire frame, the frame and blades being made to revolve in opposite directions; and still another consists of a propeller-blade, which is made to rotate, while a pair of beaters have at the same time a reciprocating motion.

All these machines, and all others with which I am acquainted, possess the common fault that the beaters, whether of wire or of the form of propeller blades, do not cut the yolk and white of the egg, but literally beat them.

104 Now, as the albumen of an egg consists of a peculiar thick, glary substance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact, so well is this understood that housewives [universally] *commonly* make use of the blade of a knife for the purpose.

My invention is designed to obviate the difficulty referred to; and consists in the use of *a revolving* frame, A, *formed of thin strips of metal of the form shown, and* mounted upon a spindle, B, around which it can freely rotate: *and also of* an outer *fixed* frame, C, of the same general form as the inner one, but large enough to permit the inner frame to rotate within it. *The outer frame* is attached to the spindle B, and *with it* furnishes a support *or frame for the operative parts of the machine* [for it]. The inner frame is *further* provided with a series of cutters *or blades* [a a a a] *a a, etc.*, arranged in any manner suitable for cutting *through* the fluid in many different [places] *planes.* These cutters *or blades* are simply pieces of sheet-tin or other suitable metal of the width of the inner frame, and *are attached to the same by their ends, as is shown, and they are all* so placed that their edges shall cut the material to be agitated when the frame A is rotated. *The blades which form the outer fixed frame C are also placed in a similar position, and when the machine is in operation, cut through the current of material which is carried past them by the revolving frame, and thus aid in the operation in a similar manner.* Upon the top of the frame A is attached a tooth wheel, D, through which, by means of the rack, E, Fig. 3, worked by the hand, a rotary motion is given *to the inner frame A* in alternate directions. *The frame C, at its upper end, is so formed and arranged in relation to the pinion D as to leave the proper space between them, upon either side, to receive the rack E, and serve as a guide or bearing to keep the rack in gear with the pinion; and H is a circular flange attached to the lower side of the pinion to prevent the rack from falling down.*

My invention also relates to the method of holding the machine in position while it is used. In the previous machines for this purpose the machine has been generally attached to or supported upon and in connection with the vessel which contained the materials to be operated upon, thus requiring a specific kind of vessel for the purpose, which, in effect, formed part of
105 *the machine; or the frame of the machine was fixed to some stationary object, with the revolving beater or beaters projecting downward below the machine into the vessel which contained the matters to be treated, the vessel being held below the machine, and entirely detached from it. But by my improvement the machine becomes a separate detached implement, which can be used in any vessel, and without any mechanical fastening of the machine to the vessel or to any other object. This part of my invention, therefore, consists in providing the bottom of the fixed frame C of the machine with a foot, F, or other suitable support, to rest upon the bottom of the vessel to support the lower part of the machine and raise the revolving-beater frame A above the fixed frame C sufficiently to permit it to revolve freely; and also providing the top of the machine with a handle, G, by which the machine can be held upright upon the bottom of the ves-*

sel by one hand, while the beater-frame is operated by the other, as is described.

When the machine is to be used it is placed with its foot F, resting upon the bottom of the vessel containing the broken eggs. The left hand bears upon the handle G and holds the machine in position. The rack E, held by the handle in the right hand, is engaged with the pinion D, and the proper motion imparted to the frame A.

It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of a crank and suitable gearing, and the beneficial effect of the *blades or* cutters [a a a a] *A, a, etc.*, would be obtained as well; but I prefer the method described of communicating motion to the frame A, for the reason that the machine is more easily cleaned and is more convenient for domestic use.

[What I claim as my invention and desire to secure by letters patent is the use of a series of cutting edges a a a a when attached to a frame A, which is capable of being rotated substantially as described for the purpose specified].

What I claim is:

1. *The revolving beater-frame formed of thin plain blades or cutters, arranged to cut edgewise through the material by their rotation, substantially as described.*

2. *The combination of the fixed frame, which contains and supports the operative machinery, provided with a foot or support at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described.*

And said cause was thereafter, on the 29th day of April, 1879, fully argued by the counsel of the respective parties on the foregoing pleadings and evidence.

And on the 9th day of July, 1879, the court filed its opinion in the words and figures following, viz:

106 Circuit Court of the United States, for the District of Connecticut.

DOVER STAMPING COMPANY
vs.
TURNER AND SEYMOUR MANUFACTURING COMPANY.

SHIPMAN, J.:

This is a bill in equity, based upon the alleged infringement of reissued letters patent for an inprovement in egg-beaters, which were issued to the plaintiffs as assignees of Timothy Earle, on July 13th, 1875. The original patent to Timothy Earle was granted July 7th, 1863.

The patentee states, in substance, in his specification, that the pre-existing machines for beating eggs, being made of round wire,

possessed the common fault that the beaters did not cut the yolk and white of the egg, but literally beat them. "Now, as the albumen of an egg consists of a peculiar thick, glairy sub-
107 stance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact, so well is this understood that housewives commonly make use of the blade of a knife for the purpose."

The invention was designed to obviate this defect in other machines, and in the specification is described substantially as follows:

The cutting part consists of a revolving frame, formed of thin strips of metal, and mounted upon a spindle around which it can freely rotate, and also of an outer fixed frame, of the same general form as the inner one, but large enough to permit the inner frame to rotate within it. The outer frame is attached to the spindle, and with it furnishes a support or frame for the operative parts of the machine. The inner frame is provided with a series of cutters or blades, called in the drawings a, a, a, a, arranged in any
108 manner suitable for cutting through the fluid in many different planes. These cutters are four pieces of sheet-tin, or other suitable metal of the width of the inner frame, and are attached to the upper or protuberant part of the frame by their ends, and are so placed that their edges shall cut the egg matter when the inner frame is rotated. The blades which form the outer frame are also placed in a similar position, and cut through the current of material, which is carried past them by the revolving frame.

The invention also related to the method of holding the machine in position when it was used. In pre-existing machines, the frame of the machine was fixed to some stationary object with the revoling beater projecting downward below the machine into the vessel which contained the egg matter. By the improvement the
109 machine becomes an implement which can be used without a mechanical fastening to any object. This part of the invention consists in providing the bottom of the outer fixed frame with a foot, or other support which rests upon the bottom of the vessel to support the lower part of the machine, and raises the revolving frame above the fixed frame enough to permit it to revolve freely; and also in providing the top of the machine with a handle by which the machine can be held upright upon the bottom of the vessel by one hand while the beater frame is operated by the other.

The claims are—

"1. The revolving beater frame formed of thin plain blades, or cutters, arranged to cut edgewise through the material by their rotation, substantially as described.

"2. The combination of the fixed frame, which contains
110 and supports the operative machinery provided with a foot, or support, at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described."

The single claim of the original patent was as follows:

"That I claim * * * is the use of a series of cutting edges a, a, a, a, when attached to a frame A, which is capable of being rotated, substantially as described for the purpose specified."

The cutting portion of the defendants' beater consists of an outer frame and inner frame, each of which is made to revolve around a central spindle by means of a cog-wheel and pinion. Each frame is composed of two curved pieces of tin joined together, or of one piece joined at its two ends so as to make nearly a circle; these pieces are thin, plain, flat pieces of tin, and are so arranged
111 as to cut edgewise through the material by their rotation. In neither the inner nor the outer frame are there any additional blades or cutters like the blades a, a, a, a.

The question of infringement of the first claim of the reissued patent depends upon the construction of the claim. If it should be properly limited so as to be confined to the frame with the cutters or blades, which are described in the specification and in the drawings, to wit: a frame with the cutters a, a, a, a, then there is no infringement, but if the claim is to be construed so as to include a beater frame formed of thin plain blades, then the invention which is recited in the first claim is found in the defendants' egg-beater.

The devices which were in use prior to the invention of the plaintiffs' assignor were composed of round wire, which by their rotation, broke rather than cut the egg material. The part of the invention which is the subject of the first claim consisted in
112 such an introduction of the knife-blade of the housewife, and the mechanism for operating the blade into an egg-beater that the egg could be rapidly cut, and the egg matter could be aerated, and be beaten into froth. The original, and also the reissued specification, dwelt upon the particular form of the cutters of the inner frame, and the original claim limited the invention to the cutters a, a, &c., but the scope of the invention was larger, and the principle was embodied in any revolving frame composed of thin and plain, as distinguished from corrugated, cutting surfaces, so arranged as when rotated to cut edgewise through the material, provided the frame was constructed and arranged substantially in the manner described in the specification. It is not claimed that the reissue is void, upon the ground that it is for a different invention from that shown or indicated in the original specifiation, but such a construction
113 is attempted to be given to the reissued claim, as would limit it to the precise language of the surrendered patent. The patent was surrendered because the grant was not co-extensive with the invention, and it would be an unnatural construction of the reissued patent, which should cramp the claim within the limitations which had been discarded. In my opinion, the natural meaning of the words which were used is to be permitted, and giving to the claim such a freedom of construction, the defendant's device is an infringement.

But it is not an infringement of the second claim, for the plain intent of the patentee was that his outer frame should be a fixed, that is, a stationary frame, as distinguished from the revolving inner frame. The specification kept this distinction clearly in view.

The next question is that of novelty. It is insisted by the
114 defendant that the beater of Samuel Ayres was an anticipation of the patented invention.

Ayres' application for a patent was rejected February 16th, 1860, and he thereupon made a lot of fifty dozen, which were mostly disposed of between May, 1860, and December, 1860. Earle's application was filed December 22, 1862. His invention was made in 1859; but it is claimed that, although he was the first inventor, the invention was in public use and on sale by Ayres more than two years before the date of the patentee's application.

The plaintiff insists as matter of law that, inasmuch as the Earle patent was granted in 1863, the defenses against its validity are confined to those which were specified in the statutes which were in force at the time when the patent was issued, and that the statute of 1836 authorized the defense of public use or sale only
115 when such use or sale was with the consent or knowledge of the patentee. The defendant, denying the rule of law as claimed by the plaintiff, replies also that the original patent was surrendered in 1875, and that a new patent was thereupon issued which is governed by the statute of 1870.

In the view which I take of the facts, it is not necessary to decide the questions which have been stated. The Ayres beater has an inner revolving frame of plain thin metal, and on paper it was an anticipation of the Earle patent, but it was practically an unsuccessful instrument. The greater part of the fifty dozen were speedily pushed into the hands of retail dealers, but the article soon turned out to be unsalable and disappeared. The reason of its disappearance is obvious, for the defects in its clumsy construction are manifest. The principle was not embodied in the machine in a
116 useful or practical form; and, although Ayres had conceived the idea of cutters or blades, he had not practically made the idea valuable to the public. Assuming that a sale by Ayres of the patented invention for more than two years before the inventor's application is a good defence, I do not think that Ayres's sale of an unsuccessful and useless device, though it contains the principle of the Earle invention, is a sale which should invalidate the Earle patent.

The remaining device which is claimed to have been anticipatory is Seaman's ice-cream freezer. It contained blades or knives which were used to remove or scrape inward the congealed cream from the wall of the can or tub so that the more liquid portions of the cream might take the place of the removed portions. The mechanism for producing revolution, in itself considered, is not
117 unlike the blades or cutters of the egg beater, but the purpose for which the mechanism of the ice-cream freezer is used to

move the material rather than to cut it, is so far different from the object of the egg-beater blades that the two devices become in their details unlike. Upon the argument the ice-cream freezer was not insisted upon as anticipatory.

Let there be a decree for an injunction, and an accounting in reference to the use of the invention recited in the first claim.

Thos. William Clarke and Elias Merwin for the plaintiff.

Charles F. Blake and John S. Beal for the defendant.

118 And on the 16th day of September, 1879, interlocutory decree was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut. April Term, 1879. In Equity.

THE DOVER STAMPING CO., Complainant,

[*vs.*]

THE TURNER & SEYMOUR M'F'G CO., Defendant.

Decree for perpetual injunction and for reference to a master.

This cause came on to be heard at this term, upon the pleadings and proof, and was argued by counsel for the respective parties; and now on this Monday, Aug. 4th, upon consideration thereof, to wit:

It is ordered, adjudged and decreed as follows, viz., that the letters patent referred to in the complainant's bill, being letters patent of the United States, granted unto the Dover Stamping Co., July 13, 1875, as reissue No. 6542 of letters patent No. 39134, granted Timothy Earle dated July 7, 1863, is a good and valid patent; and that the said Timothy Earle was the original and first inventor of the improvement described and claimed therein; and that the said defendants have infringed the first claim of said patent, and upon the exclusive rights of the complainant under the same.

And it is further ordered, adjudged and decreed, that the complainants recover of the defendants the profits which they have received or made, or which have accrued to them from said infringement by the manufacture, use or sale of the improvement described and secured by said letters patent at any and all times since the said 13th day of July, 1875, and also the damages which the complainants have sustained thereby.

And it is further ordered, adjudged and decreed, that it be referred to E. E. Marvin, Esq., a master of this court, to take and report to the court an account of the profits which the said defendants have received, or which have arisen or accrued to them from the manufacture, use or sale of said improvement, or from said infringement, and to ascertain and report the damages which the complainants have sustained thereby since the thirteenth day of July, A. D. 1875, said E. E. Marvin, Esq., having been agreed upon by the parties, and being desired as specially skilled in the investigation of mechanical accounts, which reason is considered sufficient by the court.

And it is further ordered, adjudged and decreed, that a perpetual

injunction be issued against the defendants according to the prayer of the bill.

And it is further ordered, adjudged and decreed, that the complainant recover of the defendants their costs of suit.

N. SHIPMAN,
District Judge.

Form assented to.

———— ————, *for Defendant.*

JOHN S. BEACH, ESQ.,
Counsel for Defendants.

SIR: Please take notice that on Monday, Aug. 4, 1879, at the coming in of the circuit court on that day, at Hartford, Conn., before his Honor, Judge Shipman, I shall move the court for the entry of the within decree.

THOS. WM. CLARKE,
Sol'r, of Counsel for Compl't's.

NEW HAVEN, CONN., *July 15th*, 1879.

Rec'd service of the within decree and foregoing notice.

JNO. S. BEACH,
For Defendants.

Aug. 4, 1879.

Decree to be entered on first day of next term unless before that time defendants file objections thereto. The parties agree to the appointment of Mr. Marvin, as master. Present Mr. Clarke, for complainant; Mr. Thompson, for defendant.

N. SHIPMAN, *Judge.*

119 And on the 13th day of September, 1880, Master's report was filed in the words and figures, following, viz:

United States Circuit Court, District of Connecticut.

DOVER STAMPING COMPANY
vs.
THE TURNER & SEYMOUR MAN'F'G CO., } In Equity.

Report of Master.

To the honorable, the judges of the circuit court of the United States: The undersigned to whom the taking of account in this matter has been referred, would respectfully report: that he has attended to the duties of his appointment, has heard the evidence and arguments of counsel, and has examined the authorities cited in the briefs on file, and does find from the evidence herewith reported as follows, viz:

That the complainant introduced into the market prior to the time of the defendant's infringement the Dover beater, having the beater-frames of the thin plain blades shown and claimed in the Earle patent, and had, before the time when the defendant began

to manufacture beaters embodying the same device, reached a sale of about 600 gross a year of the said Dover beater.

That the defendant made and sold from the 13th day of July, 1875, up to the 22d day of November, 1879, 1,494¼ gross of egg-beaters of the kinds known as Washington and Family, and embodying the first claim of the patent granted unto the com-
120 plainant July 13, 1875, as reissue No. 6,542 of letters patent No. 39,134, granted Timothy Earle July 7, 1863, and that the defendant actually received in cash as the avails of the sales of said beaters the sum of $35,273.33.

The defendant says that it expended in the manufacture and sale of said beaters for material and labor, including 25 per cent. for general expenses, selling, etc., $32,780.18, and for royalties paid on 692 gross Washington, $1,384, and for tools and machinery worthless for other purposes, $650; a total of $34,714.18, leaving for its whole profit on the entire business $559.15.

As to the cost of material employed by the defendant in constructing the Dover, there is no great difference between the witnesses of the complainant and the witnesses of the defendant, nor as to the amount of material required, etc., as the defendant's witness Carson states, that the prices of material given in its statement of costs, Exhibit A, to be actual, and taken from the books of the defendant, I do find this statement to be proved and true as to the amounts of material and prices therein stated.

The main point of difference is as to the cost of labor employed in the construction of defendant's infringing beaters.

It is agreed that the cost of the labor upon the two varieties, Family and Washington, was substantially the same.

Mr. Brothwell and Mr. Jenks, the two witnesses for the defendant, as to the cost of the labor upon the Family, place a price upon the details of labor required, footing respectively 7\frac{39}{100}$ and 7\frac{20}{100}$.

Mr. Page, the complainant's witness on this point, estimates the same details at $3.57, less than a half.

Mr. Brothwell's testimony in this respect is weighted by the further facts proved by the defendant that if he ever made the estimates of details of labor upon these beaters which he claims he did make, in the time of their manufacture, from actual *bona fide* test experiments, and make a record of them for the purposes of ascertaining the cost of these particular articles, according to his custom in regard to all articles manufactured by the defendant, as indicated by his answer to cross-int. 10, that then the defendant, with this cost of labor details, this cost of materials, and the price that
121 Family was selling for in the market all before it on its books, went on for five years manufacturing and selling these infringing beaters at a prospective margin of profit of about 1\frac{6}{10}$ per cent.

This is so improbable that it can only be overcome by the best

of proof, or some outside reason which does not appear in the evidence.

Although the labor might have varied, and did vary as to cost from year to year, it is stated by all the witnesses as a general estimate for the entire period of the accounting.

Page has undoubtedly the largest experience in the matter concerning which he undertakes to testify, having managed the manufacture of double the number of egg-beaters of those made under the management of Brothwell & Jenks combined.

As against Jenks, his testimony is supported by the statement of the cost of the labor upon the Dover beater for the whole five years of the accounting.

The Dover beater is very similar in all the details of its construction to the Family and Washington. The different operations to be performed, the kind and quality of material, and the size of the beater are all about the same. The weight of the Dover is a trifle more than that of either the Family or Washington.

The Dover Stamping Company has had these beaters made for it by the Lamb Knitting Company, for the whole period of this accounting under a contract to make and deliver them in Boston at the following rates respectively, viz: in 1875, $27 per gross, in 1876, $22.50; in 1877, $19; in 1878, $18, and in 1879, at three prices, averaging $11.61.

Mr. Lamb says that the Lamb Knitting Company has made these beaters for the complainant at a cost to itself during said years, as follows, viz: In 1875, $20.95; in 1876, $18.29; in 1877, $14.37; in 1878, $13.25; and in 1879, $10.91, and has made 25 per cent. on the work.

He also testifies that all the labor upon said beaters was done for the Lamb Knitting Company, by one Ethan Hadley, by the job, under contract from year to year, for the following prices, viz: In 1875, $6.50; in 1876, $4.32; in 1877, $3.84; in 1878, $3.60, and in 1879, $3, an average price per beater during the whole of the period of the accounting of $3.96. The defendant has allowed this whole connected array of figures to stand unquestioned.

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The evidence and inspection of the two beaters shows that most of the details of the labor are precisely similar, and that the whole of them are so nearly so, that proof of the cost of the actual labor upon the Dover is a very safe guide in attempting to arrive at the cost of the Family upon the disagreeing evidence in the case, and it is quite important that I am enabled to do so. I consider it safer than any amount of estimates.

The evidence of Page and Jenks are but estimates as to the cost of details with which, although they superintend and manage them, they cannot be entirely familiar, and the evidence of Brothwell, wherein it is not improbable, is no better. It is but the remembrance of certain test work at certain times, whether before or after the workmen performing the labor of the test were familiar and

dextrous with their parts being left in doubt, and can in no sense be regarded as a statement of the actual cost to the defendant of the labor per gross expended upon the beaters covered by the accounting.

Mr. Page thinks there is 5 per cent. more material and 10 per cent. more labor in the Dover than in the Family and Washington.

Mr. Jenks thinks there is 25 per cent. more work on the Family than on the Dover.

Upon careful examination of the beaters and comparison of the different operations to be performed on each, I find that there is a small amount more of material in the Dover than there is in the Family, in my judgment 5 per cent., and that there appears to be more distinct operations for the operative to perform on the Family than on the Dover.

Owing to the lightness of the castings in the Family and Washington there is more sprue and gates, and consequently more hardness in the material to be worked, consequent on the more numerous remeltings required, and it would therefore be impossible for the driller to turn off so many drilled wheels and handles of the Family as he could of Dover.

123 The drilling of the handle is required to be done with greater care in the Family than in the Dover, so as to bring the small gears in perfect alignment with the wheels and becomes thereby a slower operation, and in the case of the Washington variety there is one more hole to drill. The washers and bronzing is also extra, as appears from inspection.

On the contrary side it appears to me to be more labor to attach the beating floats to the gears of the complainant's beater than it is to attach the beating floats to the gears in the defendant's beater.

On the whole, I find that the labor is 15 per cent. more in constructing the defendant's infringing beater than in constructing the Dover beater, and that the cost to the defendant of the labor in making the infringing beater, for the period of the accounting, is the cost of the labor upon the Dover beater as paid to Ethan Hadley, increased 15 per cent.; or in other words, I find, not being over precise with the fractions in the calculation, that the cost of the labor upon the Family and Washington to the defendant before the first of April, 1877, was $5.97 per beater, and after that date, $3.94.

Substituting these labor items on the appropriate schedules of Exhibit A for the details therein given of labor, and placing the larger allowance of labor as correct in the schedule of Large Washington, there being no testimony as to which period of manufacture they belong, and allowing the other details of costs therein claimed as proper items of deduction, except the item of packing, which is covered by the allowance for labor already made, and we have for total cost to the manufacturer of beaters embodying the

infringing device, classified as they stand in the defendant's schedule "Exhibit A, recapitulation," as follows, viz:

Cost of Washington after April 1, 1877		$14 44
" " " to April 1, 1877		18 92
" " Large Washington		28 14
" " Family, (porcelain handles,) after April 1, 1877		14 32
" " " (wood handles,) after April 1, 1877		12 89
" " " (porcelain handles,) to April 1, 1877		18 81

124 Performing the computation at these rates upon the number of gross admitted by the defendants to have been sold as stated in said schedule, and we have—

350	Gross Washington,	@ $18.92		$6,622 00
320 $\frac{2}{12}$	" "	@ 14.44		4,623 21
19 $\frac{7}{12}$	" Large "	@ 28.14		551 17
85	" Family, (Por'n,)	@ 18.81		1,598 85
19 $\frac{1}{2}$	" " "	@ 14.32		279 24
700	" " (Wood,)	@ 12.89		9,023 00
	Total			$22,697 47

To this sum should be added the royalty paid on 692 gross Washington beaters, at $2.00, $1,384.00; and the sum expended for tools to make the infringing beaters, with the exception of the press, which does not appear to have been made for this particular purpose especially. The sum of these two items is $1,384 and $590, added to $22,697.47, the sum of defendants expenditures already found, gives $24,671.47, which I find was the total cost to the defendant of making and selling the said infringing beaters. Deducting this from $35,273.33, its total receipts from the sale of the same, I find $10,601.86 to be the net profits which the defendant has received from the sale of egg-beaters embodying the first claim of the said Earle patent for the period for which the defendant is directed to account under the decree in this case.

What proportion of the profit is due to the fact that the infringing egg-beaters embody beaters having cutting edges, as claimed in the first claim of the Earle patent, held to be infringed by the opinion in this suit, is a subject upon which I am furnished very meager evidence. From the fact that I am decreed to take an account of it at all, I suppose I am authorized to hold and find that this element is not a trivial element of the infringing beaters.

Mr. Earle, the defendant's witness, says that he does not think either of the Earle beaters, Nos. 1 and 2, "could be sold beside the Dover." (Book 2, p. 19.)

Mr. F. E. Young (Book No. 2, p. 31), says of the value of same as marketable egg-beaters that they have no value
125 "whatever when selling beside the Dover, unless they could be purchased for a song," and on page 30, he says of the sub-

stitution of round wire beaters for flat-wire beaters with cutting edges in the Dover beater that it "would improve it;" that "certainly it would do it no harm."

Herman B. Brooks says, (Book 2, p. 138): "No. 1 I do not consider of any account at all; it would not sell at any price. No. 2, I think, would sell very well as a second-rate, third-rate or something beater;" and, on page 41, that if round wire were substituted for this device, that the "beater would be just as good, or better;" that in fact he had tested the two devices against each other fairly, and that the Dover, with round wire beaters, worked better than with flat beaters with cutting edges.

Henry S. Jenks says of Earle's beaters Nos. 1 and 2: "I have never considered these beaters as of any value for use;" and on page 49, Book 2: "I consider the thing against the Dover is the cutting edges of the beaters;" round wire would be an "improvement."

He admits, however, that he formed this opinion in 1873, and still kept on making the "centripetal" from that time till 1878, with thin cutting-edged beaters, for the only reason that his tools were adapted to it, and it would be costly to change.

Mr. Plumb (Book No. 2, p. 79) says of Earle Exhibits Nos. 1 and 2: "I don't think they amount to anything when selling side of the Dover; nor would the Washington or Family."

Mr. Carson (Book No. 2, p. 90) says substantially that "New Family," being the Old "Family," with round wire beaters substituted for cutting-edge beaters, give equally good satisfaction to customers."

But the complainant's witnesses say (William Jones, Book No. 3, p. 3) of the thin blades of the *Family*, they are a great advantage, and, in connection with a lower price and similar appearance to the Dover, have given it its reputation and character in the market.

126 Joseph Moulton (Book 3, page 14) says that those thin blades of the Family give it value in competition with the Dover, for the reason that he thinks it is the impression of the trade that the flat floats with sharp edges is one of the principal points of the Dover.

Mr. Fernald (Book 3, p. 9,) says that the "Family" by reason of its thin plain edges resembled the Dover so much that "I think it was bought for the Dover."

Upon consideration of the whole evidence upon this point, I am disposed to find that the defendant's witnesses in the evidence as to the Earle device have to some extent avoided giving their evidence upon what I regard to be the vital point, to wit, the true valve of it, as organized in the Family.

Earle proves it to be valueless as incorporated in the Earle beater as compared to what it is as incorporated in the Dover where there is a more valuable element, so does Young, but he says that the device is of no value in the Dover; Brooks takes the same view as

to its value in No. 1 Earle substantially, but he rates No. 2 Earle in the same class that most of defendant's witnesses place Family as to compete with Dover—" a second-rate, third rate, or something beater," and so with Jenks & Plumb, only Plumb does not say cutting edges have no value.

No one of the defendant's witnesses informs the Master of what value the Earle device is to the Family and Washington, these infringing beaters, that have made these profits; they say it is valueless in the Earle, insignificant in the Dover, but as to what it is or has been to the Family they are silent, and I cannot find from their evidence.

Mr. Carson, it is true, says that defendant corporation is making and putting on the market " New Family " in place of Family, and that it gives equally good satisfaction to " customers as far as we know ; we never received any complaint," but from the major proportion of this statement the pith is taken by the qualification. There is no proof of sales of New Family to any amount, and where there is no knowledge of sales there may well be no knowledge of complaints or dissatisfaction. Complainant's witnesses say this New Family is only on the market as samples.

127 For proof of the value of the Earle device to the Family and Washington beater, I am left therefore solely to the evidence of the complainant, and Jones says that the cutting edges of the floats of the infringing beaters are of great advantage, and in connection with the similar appearance to the Dover have given them their character and reputation.

It is evident from observation that this similarity of appearance arises from the similarity of the beater floats, and Fernald says that this is a fact to the extent that he thinks Family was often bought for Dover, and this is supported inferentially at least from the fact that, after the appearance of the Family, previous buyers of the Dover to some extent decreased buying Dover and bought Family instead, as appears from the " Schedule of Mutual Customers."

Moulton says that they gave it its value in competition with the Dover, for the reason that he thinks the impression of the trade is that flat floats, with sharp edges, is one of the principal points of the Dover.

Lower prices alone would not have sold the Family; the public would not have bought an impractical egg-beater at any price. It had merchantable elements.

The defendants do not prove any other mechanical device not open to the public, or of value that is incorporated in the infringing beaters, except, perhaps, the movement of the Washington, and its value to the mechanism is measured by the royalty therefor, which has already been allowed and deducted.

I therefore conclude, and find from the evidence that the embodiment of the first claim of the Earle patent in the Family and Washington as sold by the defendant gave them their value, character, and reputation in the market, and sold them not as a competing

beater but as a low-priced beater, possessing at least one of the valuable elements of the Dover, which element was its merchantable feature, taking another class of trade, and if there are any other elements valuable and effectual, the evidence in this case has not pointed them out, and I find them to be too trifling to be considered.

'128 It is claimed further that the complainant, beside the defendant's profits already passed upon, should recover damages by reason of the fact that the defendant's infringing beaters did compete with the complainant's trade in beaters, and did in this respect invade its rights, and subject them to loss of sales t hat they otherwise would have made.

While I find it true that the defendant's beaters embodying the Earle device did make their sales on account of this essential element, it is not so clear to me that it damaged the complainant to the extent claimed. It did indeed sell during the period of the accounting about 1,500 beaters containing the infringing device, at such profit to itself as is found heretofore, but I cannot find that in so doing it injured the complainant to the extent of the complainant's profit on the same number of Dover Egg-beaters by reason of loss of sales to that extent.

The infringing beaters were put on the market at less prices, and hit a different class of customers to some extent at least by reason of that less price, and as appears on the schedule of mutual customers, comparing the period from July 1, 1876, to July 1, 1879, with the period from July 1, 1873, to July 1, 1876, we find that the complainants increased their sales to 45 of the customers about 500 gross, while to 31 they decreased their sales as compared with the previous period about 200 gross; but that the defendant did not sell to these 31 customers to supply such deficiency of demand only about one-half of it, or about 100 gross.

The Dover beater was a higher priced and superior beater in more than one respect, and the defendant's beater occupied a lower plane and did not come fully into competition with it as a general thing, and did not supplant the Dover in the market to only a small extent of the number sold.

But in view of the fact, as appears on schedule of mutual customers, that certain customers did decrease, in the second period referred to, their purchases of the first period, of Dover, and did apparently supply such deficiency to about half its extent with Family in connection with the fact that defendant's sales-

129 man, Phillips, presumes that he lowered the price of Family in order to sell it, after the price of the Dover had been named, (Book 2, p. 62,) I find that in the special instances and with the 31 customers before referred to, the defendants' infringing beaters did compete with and supplant the Dover beater, and thereby cause a loss of sales to the complainant in the whole of 100 gross of the Dover beater, and thereby deprived complainant of its profit which it would have made thereon.

The average cost of the Dover beater to the complainant during this period was about $17.10 per beater, and their selling price, not to calculate discounts, $42, and their profits on an average $24.90 per gross.

The complainant was therefore damaged by the loss of said sales to the extent of $2,490.

Now the complainant has admitted that the Turner & William's device, giving the interlacing motion to the Dover mechanism, is an essential feature of it, and defendant's witnesses hold that it is its only, or almost its only valuable element, and I myself should adjudge, if my view of the law permitted me, that at least seventy-five per cent. of its value as a merchantable mechanism arose from this element.

But I am not permitted to guess, calculate, or conjecture. I find two valuable elements in the complainant's beater, contributing to the complainant's profits in every sale it made.

Upon the complainants is the burden of apportioning the profits it receives, or is entitled to receive, of the beaters of which it has lost the sale, as between the Turner & William's device which the defendant has not infringed, and the Earle device, which it has infringed.

I find no evidence whatever upon this point; and I therefore find that the complainant is entitled to only nominal damages for loss of profits by reason of loss of sales through the said competition of the defendants.

It is claimed further that defendant has damaged the complainant by compelling the complainant to reduce the price of its beater in the market, in order to retain the trade.

The same rule would govern me in this, as is adopted
130 under the last head, if my finding should arrive at any given sum of damages, to wit, that having no evidence by which to apportion complainant's profits upon the two or more elements from which it is derived, I can find only nominal damages, so that further finding under it is really immaterial.

But under this head I find, in fact, that complainant lost no profits by reducing the selling price of its beaters upon either of the reductions which it made.

It reduced them presumably to some extent for the reason of the defendant's considerable sales, but in so doing by the reason of the making of such lower prices it brought itself into the field of cheaper beaters, and absorbed that to such an extent that for the remaining portion of the accounting its sales were almost doubled, and while its profits per beater were less, its profits on the beater business as a whole were increased, and the step proved to be very profitable departure; the profits upon the added sales by reason of so doing being more than they would have been had it maintained the sales and prices of the four prior years. And even in those last four infringing years had it maintained the average sales and prices of the four preceding years and added to such sales all the 1,500

beaters that the defendant made at the same prices, its profit then would have been but a trifle more than what it did in fact make by its added sales at a less price.

But it does not appear probable that it could have added to its sales of the four previous years all of the sales of 1,500 gross of beaters, that defendant sold. Dover beaters at Dover prices could not have caught the cheap trade that defendants supplied, and I therefore find that the complainant was not damaged by its reduction of prices, whether compulsory or voluntary, and it becomes immaterial to find whether defendant was instrumental in that regard or not.

The complainant is entitled to recover the defendant's profits herein found and nominal damages.

HARTFORD, *Sept.* 13, 1880.

E. E. MARVIN, *Master.*

131 FEE: Cash paid expenses to and at New Haven 11 days $33 00
Cash paid telegraphing 1 50
27 days hearing and deciding at $15 ..... 405 00
2 copies draft report furnished parties 9 00

$448 50

Evidence taken before Master.

132 United States Circuit Court, District of Connecticut.

DOVER STAMPING CO.
vs.
TURNER & SEYMOUR MANUF'G CO. } In Equity.

Accounting before E. E. Marvin, Master.

HARTFORD, *October* 7, 1879.

Present: Thomas William Clark, for complainant; John S. Beach, for defendant.

Defendant ordered to prepare and file statement of account on or before January 5, 1880, and hearing adjourned to that time.

HARTFORD, *January* 5, 1880.

Hearing adjourned by telegraphic order to January 26, 1880, 11 a. m., at office of John S. Beach, New Haven.

NEW HAVEN, *January* 26, 1880.

Parties present as heretofore.

James L. Carson sworn. Am officer of defendant, and present the account of the defendant, which was ordered October 7, and which is marked Exhibit A.

133 Examined by Mr. Clark, complainant's solicitor:

1. Did you verify this account from the books of your company?

A. I did not. The account was taken from the books by one of our clerks.

2. Will you produce a list of the purchases of Family and Washington egg-beaters sold by your house from July, 1875, to November, 1879, together with the dates and amounts of each sale?

A. I will, if I am so advised by counsel.

3. Where are the books from which this account was made up, and why are they not here?

A. The books are at the office of our company, and they are not here because I suppose it not necessary to bring them here.

4. How do you ascertain the prices charged for castings in these accounts?

A. By a series of experiments that we make from time to time.

5. These are estimated and not actual prices, are they?

A. We suppose them to be actual.

6. Do you charge a separate price in finding the cost of castings for the casting and for moulding the casting?

A. Certainly, we charge a separate price.

7. Do you do your own casting?

A. Yes, sir.

8. Did you pay moulders by the piece or by the day on egg-beater castings?

A. Almost entirely by the pound, by the piece as you would term it.

9. How do you get the cost of 2½ cents for the casting without moulding?

A. We have been in the habit of perhaps one day in the week weighing up all our iron and coal that is employed about the cupola, that is, all the iron, etc., and taking account of all the fuel and other expenses pertaining thereto, and in this way getting at the cost.

10. Did you keep these items, so taken, from time to time?

134 A. I don't know. I am unable to say whether we have them or not, my impression is that we have them; still I am uncertain about it.

11. Do you know how much you paid a pound for moulding, and what it was?

A. The prices that appear on our estimate; these are the actual prices paid for moulding, unless it be a small amount of the small and strap gears.

12. Well, what was it in pounds?

A. The estimate shows.

13. You do not know, except from this account, do you?

A. I do.

14. What was the price?

A. I have not the figures in my mind just what the estimate shows.

15. Am I to understand that you do know how much a pound you paid for moulding, and refuse to say, or that don't you know, and can't say?

A. You are not to understand either; I know for a fact that we paid the prices that appear in the estimate; I know it from our book of prices.

16. But you cannot tell now what the price was per pound, can you?

A. If you will allow me to look at the estimate, I can tell you.

17. You can't tell otherwise, can you?

A. I can't here, for I have not the necessary papers.

18. Did you pay by the piece or by the pound, or by the day for drilling wheels, handles, and gears, and how much?

A. We paid by the day.

19. How much?

A. Different prices; I am unable now to give you the figures precisely.

20. How many of wheels, handles, and gears would a man do in a day?

A. The same man very seldom works on all the pieces.

21. How many wheels could a man do in a day, and at what wages?

A. I don't believe I could answer that question. I don't believe I know accurately enough.

135 22. Is there any one in your company that can answer it, and who is he?

A. There is; Mr. Brothwell, our foreman.

23. Does he also know about the wages and the amount of work done in a day as regards gears, milling, piercing floats, straightening wires, setting down, bending wires, attaching wires to gear, and riveting?

A. Yes, sir.

24. Were all those items of labor paid for by the day?

A. They were not all paid for by the day all the time; I am unable to say just which were and which were not.

25. How do you get at the item of breakage or waste?

A. By several experiments and tests which we have made at different periods of our manufacture.

26. What did those experiments show?

A. They show, taking a series of them, the actual waste of 10 per cent. on the different parts entering into the construction of the goods up to a certain point.

27. And that breakage and waste of 10 per cent. occurred after all the labor had been put on these parts, and they were riveted up to that point, did it?

A. The loss occurred from the commencement all through the process of manufacture.

28. Did you pay, when you were paying, by the piece or by the pound, the workmen for the pounds or pieces that he spoiled, or only for the pieces he turned in fit for use?

A. We did not pay him for the pieces spoiled through his care-

lessness or fault of his, but we did pay him for the pieces spoiled if it was done by no fault of his.

29. What proportion of the loss was due to bad castings and wires?

A. I don't know as I can give any answer to that; at the present time I could not do it.

30. You have charged 10 per cent. loss on labor as well as on stock. Do you mean by making that charge to say that 10 per cent. of the stock was so bad that you were obliged to pay the workmen for their work on it?

A. I don't know that you can say that the stock was so bad; the loss occurred from the commencement, and was partly for poor stock and partly for poor labor, perhaps.

136 31. And you paid the workmen for 10 per cent. more labor than you received in finished beaters, did you?

A. As a matter of fact I suppose we did, although we did not look upon it in that way.

32. Were all the beaters made sold through your New York house, or were some shipped from the factory direct to customers?

A. Some were shipped direct from the factory to our customers.

33. What was the lowest price made to the New York house for these beaters?

A. We made no price to the New York house.

34. What was the invoiced cost to the New York House?

A. There was no price whatever made to the New York house; there was no price whatever put on the goods.

35. What was the lowest prices at which those beaters were sold to any one?

A. I am not able to state from memory.

36. Did you not sell them as low as $25 a gross?

A. Yes, sir.

37. Did you not sell them for less than that?

A. Yes, sir.

38. To whom and at what price?

A. I believe I cannot answer that question; we sold for less than $25 a gross to Sidney, Shepherd & Co., Buffalo; I cannot give the price.

39. In what quantity did you sell them at this low price?

A. My impression is that we shipped them 5 gross at a time at this price.

40. What was the lowest price of 10 gross lots?

A. We had no established price, the price we asked depending on the competition we met.

41. Who was your principal competitor?

A. I am unable to say.

42. Did you have any more notable competitor than the Dover Stamping Company with the Dover egg-beater?

A. I think we did; that is, we heard more complaints from another egg-beater being sold at a low price than we did the Dover egg-beater.

137 43. What egg-beater was that?

A. We often heard it spoken of as an egg beater being sold lower than ours, without any name; sometimes heard it was the Starr, and sometimes that it was the Brookes egg-beater.

44. At what price did you sell Russell & Erwin Mfg. Co.?

A. I am unable to give the price now without referring to my books.

45. Were any of these egg-beaters exported?

A. Some of them were.

46. Are those exported egg-beaters in this account?

A. They are.

47. Will you produce the bills of flat wire, round wire, wood handles, porcelain handles, rivets, and washers from which these charges were originally made?

A. Yes, sir, so far as we can; the rivets and washers we made ourselves.

48. How is the cost of rivets and washers made up?

A. In the same way we make an estimate of any of our goods, the cost of stock and an estimate of labor in producing it.

49. Will you please give me the details of the calculation by which you make up the cost of rivets and washers in these accounts?

A. We take the cost of our iron in the raw material, cost of labor necessary to produce a certain amount of work, and the amount of scrap that is made from a certain amount of goods.

50. Now what were the figures of these details that you have just told us about?

A. I have not the figures with me now, and I cannot give them to you.

51. Why do you charge general expenses at 25 per cent.?

A. We find that our general expenses exceed rather than fall under 25 per cent. of our sales, gross sales in any year.

52. What do you call general expenses; give me the items?

A. Salaries, traveling expenses, insurance, rent, and interest; these are the only separate accounts that we keep; there are many more details that go into one or the other of those accounts, which we do not keep separate accounts of.

53. Is the rent account for rent of the factory?

A. No.

138 54. For what is it?

A. For the rent of our New York office, storehouse; it is a small item now anyway; it used to be a large item.

55. When did it change from a large item to a small; during the period of this account?

A. It is my recollection that it was in May, 1875.

56. To whom did you pay the royalty charged?

A. F. P. Seymour.

57. What is the worthless tools and machinery you credit yourselves with in this account?

A. It is made up of dies, formers of different kinds, and appliances of different kinds, which belong to our machinery.

58. Will you give me a schedule of it?

A. I can make you up one.

59. I wish to know the prices paid by the pound, or by the piece, for the piece or given quantity for the various sorts of labor charged in the account, which was so paid for, and also the price by the day for the other kind of labor, and the average day's work of a workman, viz., for moulding, drilling, milling, either of handles, gears, or wheels, for straightening and cutting wire, whether round or flat, or for milling it, for piercing floats, setting down, bending, attaching, riveting, milling rivets, or attaching floats, and also the details and figures of the various calculations by which you arrive at the cost of castings, washers and rivets, and the bills of wire purchased, and the time checks of the workmen employed on this labor during the period of your account; will you produce these for me, and how soon?

A. I will produce these items so far as I can, and will fix a time presently.

60. Will you also bring with you for examination your foreman, or some other person who can verify these items of cost of his own knowledge?

A. Yes, sir.

61. Will you also produce the bills of lading or receipts for the shipment of these egg-beaters from your factory?

A. I could not produce these in an intelligent form; I think it would be an impossibility any way.

62. Will you also produce a list of sales, giving dates, quantities, purchasers, and prices?

139 I will, unless otherwise advised by my counsel.

63. How soon can you do this which I have asked?

A. I think I can by Tuesday, Feb. 17.

Adjourned to Tuesday, Feb. 17th, 1880, at 10 a. m.

NEW HAVEN, *February* 17, 1880.

Parties present as heretofore.

Complainant's Testimony Resumed.

Testimony of James L. Carson, continued.

64. Have you produced the schedule of worthless tools enquired for in int. 57, making your last item but one in the recapitulation of your account, and amounting to $650?

A. I have.

65. Where is it?

A. Here it is. (Schedule presented, and marked Exhibit B.)

66. Have none of these tools been used for any purpose since the injunction was served in this case?

A. I think that question can be answered better by our Mr. Brothwell, who can answer of his own knowledge.

67. Have you not made and sold since the date of the injunction in this case, egg-beaters substantially like the Family Egg-beater, that were as good, except that the beating floats were made of a pair of round wires?

A. Yes, sir.

68. Have you the schedule of prices of labor that was enquired of the last examination?

A. I havn't it; I supposed our estimate covered the point.

69. Have you the list of sales enquired of at the last examination?

A. It is not entirely completed in form for filing.

(It is agreed that this may be filed with the examiner when completed, and a copy furnished counsel.)

70. Have you the bills of material that were enquired of?

A. Yes, sir. (Bills produced.)

140 What was the items on these bills entering into the Washington and Family beaters?

A. No. 7¼, flat tinned wire.
No. 2¼, flat tinned wire.
No. 5½, round tinned wire.
No. 5, round tinned wire.
No. 7, flat tinned wire.
No. 8, round tinned wire.
No. 8½, round tinned wire.
No. 7¾, flat tinned wire.
No. 8½, round tinned wire.
No. 26–64, No. 20, flat tinned wire.
No. 15½, flat tinned wire.

These are all the numbers there are of wood handles.

The wood handles were purchased in exchange trade. No invoices were made at the time of the purchase. These that I present have lately been furnished.

Of rivets, the sizes are:

No. 12 rivet wire.
No. 12½ rivet wire.

Wire of the kind shown on these invoices was used to make rivets.

John G. Brothwell sworn:

1. Were you in charge of the manufactory of egg-beaters by the Turner & Seymour Co.?

A. I have been the last four years.

2. With regard to the Washington and Family Egg-beaters made by them, can you give us the prices paid for putting them together, and doing the work on them in detail?

A. I can.

3. Please do so, stating which of the work was by the day, and which by the job, piece, or other number?

A. I would say in regard to that, that with one or two exceptions the work has been done by the day. I shall have to refer to a memorandum together. In putting the work together the only work that was done by the piece was last assembling of them, putting the parts together, which was $1.75 per gross, drilling the wheels
141 was sixty cents a gross, that is our estimate on them, drilling the handle ninety cents per gross, that is as near as we can get at it, of course the men were hired by the day that worked on this work.

Drilling the gears, $1.20 per gross. Estimated them all in the same way, this was all by day work.

Milling handles, twenty-four cents per gross.
Milling wheels, twenty-four cents per gross.
Straightening and cutting flat wire, eight cents per gross.
Ditto round wire, six cents per gross.
Milling round wire, twenty-four cents per gross.
Piercing outside floats, twelve cents per gross.
Piercing inside floats, eleven cents per gross.
Setting down inside floats, six cents per gross.
Bending outside floats, fifteen cents per gross.
Bending inside floats, twelve cents per gross.
Attaching outside floats to gears, fifty cents per gross.
Attaching inside floats to spindles, twenty-five cents per gross.
Attaching outside floats to spindles, twenty-five cents per gross.
Riveting wheel on handle, forty cents per gross.
Riveting porcelain handle, thirty cents per gros.
Milling handle rivit, twelve cents per gross.
Attaching float to handle, $1.44 per gross.

4. Which of these items are included in the assembling of the beaters?

A. I would say in regard to that, that there is a mistake, the assembling was $1.44, and not $1.75, and was also called attaching floats to handle.

5. Did the men who did the other work on the beaters, by the day, work continuously for any length of time on beaters, or did they have other work?

A. They worked continuously on the beaters.

6. Each man having a particular work all the time or doing more than one kind?

A. Men that assembled the beaters sometime did the drilling or straightening the wire, or milling the wire.

7. How much a day were the men paid who did drilling or riveting?

A. My usual class of help that I employed on egg-beaters I paid $1.50 per day; some I paid more.

8. How many wheels could a man drill a day?

142 A. He would drill from 300 to 400.

9. How many handles could he drill?

A. From 200 to 300.

10. Why could he not drill as many handles as wheels?

A. He has got, of course, two holes to drill in the wheels and three in the handles.

11. How many gears could he drill in a day?

A. From 150 to 200.

12. Why do you set, then, the price of drilling one gear, or 1-150 to 1 200 of a day's work, at the same price as drilling the wheels, which were 1-300 or 1-400 of a day's work?

A. There are two gears that we have to drill; one of these gears must be reamed very accurately, and of course takes a longer time.

13. And that is why, is it, that you charge $1.20 for drilling the two gears and sixty cents for drilling the wheel?

A. That is it.

14. Then the drilling the two gears in an egg-beater occupied 1-75 to 1-100 of a day's work, as you said, and cost $1.20 per gross, and the drilling the wheel occupied 1-300 to 1-400 of a day's work, and cost sixty cents per gross; why was this discrepancy?

A. The Washington Beater, which I suppose now that I am talking about, required two more holes drilled in the gear than the Family Beater.

15. And this is the reason, is it, why you charge up half as much only for day's labor on drilling wheels as for day's labor on drilling gears?

A. There is twice the work to do on gears that there is on wheels.

16. And because of this do you mean to be understood that a man working on gears at $1.50 a day, will earn $3.00 in the same time that a man working on wheels at the same day's wages will earn $1.50?

A. A man will drill twice as many wheels in ten hours as he can gears for Washington Beaters.

17. My question was whether, at the same day's wages, he can, working by the day, earn any more money in the one case than in the other?

143 A. I should say not.

18. How many handles could he mill, and how many wheels?

A. From 1,000 to 1,200 a day.

19. How much flat wire could he straighten out?

A. From 1,600 to 2,000 beaters.

20. How much round wire?

A. From 2,000 to 2,500 beaters.

21. How much round wire could he mill?

A. From 900 to 1,100 beaters a day.

22. How many floats could he pierce?

A. From 700 to 900.

23. How many floats could he bend outside and inside?
A. From 500 to 700 outside, and from 700 to 900 inside.
24. How many outside floats could he attach to gears?
A. From 400 to 450.
25. How many inside floats could he attach to spindles?
A. From 800 to 900.
26. How many outside floats to spindles?
A. From 800 to 900.
27. How many floats could he set down?
A. From 1,500 to 1,600.
28. Was the setting down, attaching to gears and spindles, or piercing floats, or straightening and cutting, or milling wire done by the same man on the same lot of beaters on the same day, or were any two of these operations to the outside or inside floats done by the same man on the same day?
A. I should say not.
29. How many wheels could a man rivet to handles in a day.
A. From 500 to 600.
30. What is riveting the handle?
A. There is riveting the handle on the wheel, and riveting the small porcelain or wooden handle on the wheel.
31. How much of this last could a man do in a day?
A. From 650 to 700 porcelain handles.
32. Did you ever keep account of the breakage and waste?
A. I have.
144 33. What did it occur in mostly, the cast work or the other work?
A. Mostly in the cast work.
34. What did it amount to as you observed it?
A. On the wheels, through hard castings, it would amount to 15 per cent., on the gears 10 per cent., on the floats 10 per cent. I do not know what other details I could go into; it would run in about that way.
35. Were all your wheel castings hard castings?
A. No.
36. What did the wheel breakage amount to when they were not hard?
A. Not anything on the wheels.
37. How many rivets could a man mill in a day?
A. From 1,000 to 1,400.
38. About how many men did you keep to work on egg-beaters continuously?
A. That is a question that I cannot answer.
39. How many would they average?
A. That I could not tell now.
40. More than one?
A. Yes.
41. How many more than one to your best judgment?
A. I don't know how I can answer that question.

42. Is it impossible for you to form a judgment?

A. It is in that way.

43. Could you give me the names of the men who worked on egg-beaters, and the time which each one of them worked from July 15, 1875, to Nov. 25, 1879, from any time books or memoranda you have?

A. I could not.

44. Could you for any part of that time?

A. I could not.

45. Cannot you give the name of any man who worked on egg-beaters during the four years from July 15, 1875, to Nov. 25, 1879?

A. Not continuously.

46. Then you cannot remember the name of any man or men who riveted, bent wire for, or drilled or milled any part
145 of an egg-beater, or assembled on, during all or any part of the time you have been foreman of the Turner & Seymour Co., can you?

A. If that refers to one man, I can not.

47. Then, during the time you have been foreman for Turner & Seymour Co., no man whose name you know has done any work on an egg-beater. Is this correct?

A. I don't wish to be so understood.

48. Then name the man, or men, and as well as you can, the work they did, and when they did it.

A. I would say that, in regard to that question, I make changes in regard to my work, so that I cannot place the men at present.

49. Practically, then, about all the men have worked on egg-beaters, have they?

A. I should say, sometime or other, men that are in the employ of the company might have done some part of the work, but not all of them.

50. Now, give me the names of all the men you remember in the employ of Turner & Seymour Co., and under you as foreman, from July 15, 1875, and until November 25, 1879.

A. I could not do it here.

51. Don't you remember any one?

A. Not that worked on them continuously.

52. Give me any names you remember on your factory pay-roll during any part of that time, and all the names you remember.

A. George Atkins, Edward Dunbar, Anson Balcom, Henry P. Miller, James Cummings, Harvey Bellamy, William B. Joyce, Lyman B. Munson, M. J. Platt, John Carroll, Albert Tuttle, James Palmer, Cornelius Donohue, Lizzie Ryder, Nellie Clark, Hattie Downs, A. C. Fargo, Homer Wooster, Charles Hubbard, Charles Potter. There are several more, but I do not now recall their names.

53. Look at Schedule B and say whether any of that machinery

has been used since November 25, 1879, for any purpose, or whether similar machinery has been used since that time?

A. No, sir.

146 54. When did you give up making the Washington Beater first?

A. I can't give you the date just now, sir.

55. In what year?

A. To the best of my recollection it was in 1877.

56. Which of the items from 1 to 18, in Exhibit B, were machines or tools used for Washington Beaters?

A. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18.

57. What was the press, No. 16, used for?

A. Cutting up flat and round wires for Family Beaters.

58. Was it bought for that purpose?

A. I cannot say it was bought for that purpose; that was the only thing we ever used it for.

59. When did you get it?

A. Mr. Carson will have to answer that question; I cannot give the date.

60. What do you use now for cutting up the wires of your present Family Beater?

A. I use a hand machine for cutting up all my wire at the present time.

61. How long have you so used a hand machine for cutting beater wires?

A. I should say about two months.

62. And you cut all the wires of the Family machine before November, 1879, by the press?

A. Yes, sir.

Mr. Carson recalled:

72. Were all these tools and machines bought, or made expressly for making egg-beaters?

A. All but this press; I cannot say that we bought it expressly for that purpose; that was all we used it for.

73. How were the prices fixed on these tools?

A. We make a great many tools; we are making them every day, and we compared these tools with others of a like description, and as we are making tools at the present time substantially like these, as far as labor and material cost, we estimate these to cost the same as these we are now making.

147 74. And charged them at estimated cost, did you?

A. Yes, sir.

Adjourned to March 2, 1880, 10 a. m.

NEW HAVEN, *March* 2, 1880.

Parties present as heretofore.

Complainant's testimony resumed.

Defendant's account of sales presented and marked Exhibit B.

Complainant files objections to the account, also claim in regard thereto.

Adjourned to Monday, March 22, 10 a. m.

NEW HAVEN, *April* 13, 1880.

Parties present as heretofore.

Thomas C. Page sworn:

1. Have you ever been engaged in the manufacture of egg-beaters; and, if so, how and when?

A. As agent of the Lamb Knitting Co., I have been connected with the manufacture of egg-beaters from year 1871 to present time.

2. What sort of egg-beaters have you made during that time, and about how many in all?

A. I have manufactured what is known as the Dover Egg-beater, from four thousand to six thousand gross, I should judge. That is a rough estimate. Also, the Earle Egg-beater, about two hundred gross of them; that is what I call the Dover, marked Dover on the wheel, and this is what I call the Earle, marked Earle on the wheel.

3. In what way was your manufacture carried on; and, if as a contractor, for whom?

A. We contracted for the manufacture of them for the Dover Stamping Co., of Boston.

4. Who furnished the stock for making the beaters?

A. The Lamb Knitting Manufacturing Co.

148 5. How was the labor done upon them, by the day or by the job?

A. By the job.

6. Did you divide up the work and let it out to different men, or was it taken by a single sub-contractor?

A. It was taken by a single sub-contractor.

7. Did his men work by the day or by the piece?

A. By the piece.

8. Now, during the time that you have made egg-beaters in this way, did the men who did the work upon them make good average daily pay for that class of men?

A. I have no possible knowledge of what the hands made beyond what the contractor has told me, but I judge (the witness' judgment objected to, not founded on knowledge) that they were making quite as good wages as the same class of help in other parts of the manufactory were making, from the fact that they continued to do the work from year to year; while, if they were making less, there was nothing to prevent them from giving up their piece-work and working in other departments of the shop on piece work or day work.

9. How has your sub-contractor done during this time?

A. He has done very much better than ordinary mechanics of his skill in the other departments of our works.

10. Please look at the Washington and Family Beaters shown

you, and say how they compare for cost of material and labor of making with the Dover?

A. I should think there was a trifle less material and considrable less labor in the Family and Washington beaters than in the Dover.

11. Please state about what difference in material by a percentage, if you can, there would be, and the same as to labor.

A. I should think there was 5 per cent., at least, less material, and fully 10 per cent. less labor.

12. Are you acquainted with any of the Turner & Seymour Company's managers; and, if so, do you know of such person having visited your establishment at any time and seen the manufacture of egg-beaters there; and, if so, when and what occurred?

A. I have met Mr. Turner several times. He visited our factory some 5 or 6 years ago; I cannot state definitely the year.
149 I was introduced to him by Mr. L. L. Davis of the Davis Level Company, of Springfield now. I took Mr. Davis and Mr. Turner through our works, showing him the whole operation of the manufacture of egg-beaters, and on his leaving, presented him (Mr. Turner) with a Dover egg-beater.

13. Did you afterwards visit the Turner & Seymour Company's works, and find them engaged in making an imitation Dover beater?

A. I did.

14. Was this last visit before the time when you made an affidavit in a suit brought against them by the Dover Stamping Company?

A. It was.

15. How long was the visit of yours after Mr. Turner's visit to you?

A. I should think from 8 to 12 months.

16. Please state what was the cost of material, and what the cost of labor to you, on the Dover beater, for the years 1875, 1876, 1877, 1878, and 1879, respectively, giving items in each year?

A. In 1875, cost per gross for stock: 8¼ pounds flat wire, 25 cents a pound; 25½ pounds round wire at 16 cents a pound; 53 pounds castings at 7 cents; 2¾ pounds small gear castings at 14 cents; 12 paper boxes as 6½ cents; wood handles at 20 cents per gross; wood case, 55 cents; 3 pounds rivets, 14 cents per pound; 2½ babbit, 15 cents per pound; paper and twine, 10 cents per gross; freights on stock, including freights on goods to Boston, 40 cents per gross; paid contractor for labor, $6.60 per gross; waste and supplies on $9.97 per gross; use of tools and general expenses, 20 per cent.; total cost for 1875, $20.95.

1876: 9¼ flat wire, 25 cents; 5½ round at 11½ cents; 53 pounds casting at 7 cents; 2¾ small gear castings at 12; 12 paper boxes at 5½; wood handles, 20 cents; wood case, 50 cents; 3 pounds rivets, 10 cents per pound; 2½ babbit, 12 cents per pound; paper and twine 8 cents per gross; freight, 35 cents; waste and supplies 8 per cent.

on $9.92; labor, $4.32 per gross; use of tools and general expenses, $2.88; total cost, $18.29 per gross.

1877: 9¼ pounds flat wire at 21 cents per pound; 5½ pounds round wire at 11½ cents per pound; 53 pounds of casting at 5 cents per pound; 2¾ pounds small gear castings at 12 cents
150 per pound; 12 paper boxes at 4 cents; wood handles, 20 cents per gross; 1 case, 40 cents; 3 pounds rivets at 8 cents per pound; 2 pounds babbit at 12 cents per pound; paper and twine, 8 cents per gross; freight, 30 cents; waste and supplies, 8 per cent., 56 cents; labor, $3.84; use of tools and general expenses, $2.39; total, $14.37.

1878: 9½ pounds flat wire at 17¾ cents per pound; 5½ pounds round wire at 11½ cents per pound; 53 pounds castings at 5 cents per pound; 2¾ pounds small gear castings at 12 cents per pound; 12 paper boxes at 4 cents; wood handles, 11 cents per gross; wood case, 40 cents; 3 pounds rivets, 8 cents per pound; 2½ pounds babbit at 10 cents: paper and twine, 6 cents; freights, 28 cents; waste and supplies, 8 per cent. on $6.78, 54 cents; labor, $3.60 per gross; use of tools and general expenses, 20 per cent., $2.24; total, $13.25.

1879: 9½ pounds flat iron at 17 cents per pound; 5½ pounds round iron at 12½ cents per pound; 53 pound castings at 5 cents per pound; 2¾ pounds small gear castings at 12 cents per pound; 12 paper boxes at 4 cents; wood handles, 11 cents per gross; case, 40 cents; 3 pounds rivets at 10 cents per pound; 2½ pounds babbit at 8 cents per pound; paper and twine, 5 cents; freights, 23 cents; waste on material, 5 per cent, 21; use of tools and general expenses, 60 cents; labor, $3.00; total, $10.91.

Before 1879 the charge for use of tools and general expenses was on stock and material, the whole of it; in the year 1879 it is on the labor only; on the $3.00 we pay for labor we have charged 20 per cent.; before that it was on stock, material, and labor; the waste was on stock, leaving out freights and labor.

17. Do these footings of $20.95 in 1875, $18.29 in 1876, $14.37 in 1877, $13.25 in 1878, $10.91 in 1879, fairly and fully represent the cost to your concern of a gross of Dover Egg-Beaters in those years, packed, and delivered in Boston?

A. They do.

18. Please look at the items of cost and material in the accompanying schedules included under the items, wheels, and handles, small gear, moulding wheels and handles, and moulding small gear in the three schedules of Washington Egg-Beaters, and three schedules of Family, and say whether these items make a fair charge for castings, as you have estimated them in your work?

151 A. I find these casting cost from 5 to 5½ per pound, which I should think was a very reasonable price.

19. Taking next the items of rivets, washers, flat and round wire, porcelain and wood handles, boxes and case, please examine the schedule, and state how the prices for these compare with your

prices for similar material for the various periods mentioned at the top of the schedule?

A. I don't see how I can give any intelligent answer, as the price of material varies so much, and each year, and the question calls for prices since 1877, and before 1877.

20. Do the best you can on that, please.

A. I find flat tinned wire in the Washington Beater, prior to 1877, shown at thirty-three cents per pound; we paid twenty-five for the same, in 1875 and 1876; I find that they bought their round wire cheaper than we did; I find rivets prior to 1877, at fifteen per pound, we paid fourteen in 1875, and in 1876, ten; I find the flat wire in the Washington beater after April 1, 1877, given at eighteen cents. There is no material difference in that, for seventeen and three-quarters is what we paid. I find wood handles, after April 1, 1877, costing defendant forty per gross; we paid twenty. I see nothing else that varies materially, taking the time and stock together.

21. Then on the whole, the cost of the stock is not unfairly charged?

A. I do not think it is.

22. Now please compare the items of labor in that account with the cost of similar labor in your establishment, and say whether or not those charges are fair; and, if not fair, to what extent they are over charges.

A. I find the drilling of the wheels at sixty cents per gross, on Washington, after April 1, 1877; that would be about forty cents per hundred. A $1.25 man with us, or a man earning that per day, drills about one thousand per day, and the hub is nearly three times as far to drill through. I should think twenty cents per hundred a great price for such work; and drilling the handles, I find charged at ninety cents per gross. There is the same number of holes in this as in the Dover, and not half the distance to drill. A man earning $1.50 per day by the piece, drills one thousand, and I should think twenty-five cents per hundred a large price for doing that work.

152 The two small gears, a fair price would be thirty-five cents per hundred beaters; I should think ten cents per hundred a fair price for milling handles, and the same price for milling wheels; the piercing outside floats, the straightening and cutting is done by us altogether; I should think ten cents per gross a fair price for it; the piercing of the inside floats costs us just the same as the outside; six cents per gross is probably a fair price for setting down; bending inside and outside floats I should say that eight cents a gross of beaters was a fair price; attaching outside float to gears, I find it fifty cents per gross here; I think think thirty-five per gross a fair price; attaching inside float to spindle, ten cents a gross; it is a fair price; attaching outside float to spindle, ten cents is a fair price; riveting the wheel on to handle, twenty-five cents per gross is a fair price; riveting handle to wheel, ten cents a gross

is a fair price—is what we pay; milling handle and rivet, five cents per gross—a fair price; attaching floats to handles, I should think fifty cents per gross a fair price.

Our bronzing costs us about ten cents per gross; packing is twelve cents a gross.

The prices of labor in regard to the Family Beater is the same, with the exception of the bronzing charge at five and a half, and attaching outside floats to gear, which does not appear in the Family, and the drilling the gear charged at $1.20, instead of sixty.

23. Do the items which you say are fair prices on the Washington, apply as fair prices for corresponding work on the Family Beater?

A. With the exception of a trifle more drilling on the gear of the Washington, equal perhaps to fifteen cents per gross.

24. So that deducting fifteen cents for drilling and ten cents per gross for attaching outside float to gear, your estimate for cost for labor on the Family Beater would be same as on the Washington?

A. I think that fifteen cents would cover it, inasmuch as the extra binding on the Family would compensate for the extra work on the Washington.

25. At the prices you have named as fair, what wages do you think men on piece work of this sort would be likely to make, if reasonably industrious and attentive?

153 A. All this work is not men's work; such part as would be done by men, they could make $1.50 per day. Such part is done of it as by boys, they could make $1.00 per day, about.

26. Have those been fair day's wages for such men and boys that worked on such sort of work, during the years from 1875 to 1879?

A. They have.

Cross-examined by Mr. Beach.

X 27. What is the character of your connection with the Lamb Knitting Manufacturing Company?

A. Managing agent.

X 28. You say, in answer to Int. 13, that you visited the factory of Turner & Seymour Company, at Wolcottville, and found that they were making an imitation Dover Egg-Beater. Was this imitation Dover Egg-Beater they were making what is now known as the Washington or Family Egg-Beater?

A. No, sir; it was not?

X 29. You have spoken of a sub-contractor who performed the labor upon these egg-beaters. Has this sub-contractor been the same individual during the entire period of which you have spoken?

A. He has.

X 30. What is his name?

A. Ethan Hadley.

X 31. Is your contract with him in writing?

A. It is not.

X 32. Has it ever been during the entire period?

A. It has not.

X 33. Who has charge of the workmen, men and boys, who do the labor on beaters?

A. This same Mr. Ethan Hadley.

X 34. What portion of the labor is done by men and what by boys?

A. The drilling of the wheels and handles and assembling is done by men, also the making of floats and round wire braces; the balance is done by boys and one girl.

X 35. You have, in your estimate of the cost of the beater, given us thirteen items relating to the cost of material. What personal knowledge have you as to the cost of these respective items?

154

A. I have the purchasing of them all.

X 36. You have given us sundry items relating to the cost of labor upon these beaters; what personal knowledge have you as to correctness of these several items?

A. So far as the items are similar to those of the Dover Beater, I have taken them from the figures as given me by the contractor as being his figures for the cost or the division of the cost which we pay him for contracting for doing the work; so far as they do not agree with ours, or rather those of the Dover, I have estimated them according to my best judgment in regard to such work.

X 37. Did you ever make or have the personal supervision of the making of an egg-beater like the Family or Washington?

A. As the agent of our company I have the supervision of making of the Earle Beater.

X 38. Is the contract of the Knitting Company with the Dover Company in writing?

A. Not as a contract, but in our correspondence it may be proved.

X 39. Has the price paid you by the Dover Company been the same during this period?

A. It has not.

X 40. Can you give the prices paid during the several years?

A. I cannot all that time from memory; in 1879 it was $12 per gross; in 1878 it was $18 per gross; in 1877, I think it was $19; the other years I don't remember; 1876 it was $22.50, and in 1875 it was $27.

THOMAS C. PAGE.

Subscribed and sworn to before me, this 13th day of April, A. D. 1880.

E. E. MARVIN, *Master.*

Adjourned to April 14, 1880, 10 a. m.

NEW HAVEN, *April* 14, 1880.

155 Parties present as heretofore.

L. Bacon Foss sworn:

What is your occupation?

A. I am general manager of the Dover Stamping Company, a corporation whose business is in Boston.

2. Are you acquainted with the egg-beater business of that Company; and if so, how long and how familiarly have you been acquainted with it?

A. I have been acquainted with it from the date of incorporation of the company in 1871, and have had chief charge of it during that time; also, previous to that date as the clerk of the predecessors of that company.

3. In what form did your company put on the market the egg-beaters with cutting edges, as described in the Earle patent, from the year 1874 till the present time, and in what quantities?

A. They were put on the market in the form of what is known as the Dover Egg-beater, chiefly.

In 1874 our sales were		625	gross.
1875	"	591	"
1876	"	about 1,000	"
1877	"	1,000	"
1878	"	1,000	"
1879	"	1,500	"

Those figures approximate our sales without going into small quantities.

4. At what prices and discounts were they sold in these years?

A. 1874, 1875, 1876, to February, 1876, in quantities not less than a gross, $60 per gross, net; from February, 1876, to March, 1879, in quanties not less than a gross, $42 per gross, net; in ten gross lots, five per cent. discount. From March, 1879, to August, 1879, the price was $36 per gross. In ten gross lots, ten per cent. off; in five gross lots, five per cent. From August, 1879, to

156 date, price $42 per gross, net. Same discounts as during last period. Between February, 1876, and March, 1879, the five gross lots were two and one-half per cent. off.

5. What competition in cutting edge egg-beaters did you have in the market from 1874 to 1879 inclusive?

A. We had chiefly the egg-beaters made by the defendant, of three patterns; we had some from the manufacture of Edwin D. Monroe, called the Peerless or Star; I remember no other.

6. When did the Turner & Seymour competition begin, and when did it cease?

A. It began to be felt in 1874, and I have never known it to cease.

7. When did the Munroe competition cease, and under what circumstances?

A. It ceased in January, 1876, by granting a perpetual injunction

against him; we having had a suit against him, in the circuit court, by what you would call a compromise, I suppose we entered into an agreement, by which he conceded that a perpetual injunction, and transferred to us all his egg-beater machinery, and the good will of his concern in egg-beaters, together with all the stock in process of manufacture, his cuts, and all the appurtenances of his egg-beater business, and an agreement never to manufacture egg-beaters again of any kind.

8. Had there been any complaints as to the price of $60 per gross, before the competition of the defendant began?

A. None worthy of particular notice, no more than pertains to the price of any article in trade that I know of. We held the price at about $60 for four years, and sold egg-beaters with greater ease at that price than at any lower price, previous or afterwards.

9. What was your reason for lowering the price in February, 1876, from $60 to $42, with discounts, and again in March, 1879, to $36, with discounts, and for restoring the price in August, 1879, to $42, and discounts?

A. The presence in the markets of the Washington Beater, at less than half our price, compelled us to lower our price from $60 to $42. The presence of the Family compelled us to reduce our price from $42 to $36, in March, 1879, with discounts. When the opinion of the U. S. circuit court was rendered in our favor,

July, 1879, and published, interdicting the Family and
157 Washington Beater, the demand for our beater was very largely increased for about two months, and warranted us in advancing the price to the former figures of $42, with discounts as before named.

10. Were these beaters of yours made in your own shops or contracted for, and what did they cost you in the respective years already inquired of?

A. They were not made in our own shops; they were contracted for, and we paid for them:

In 1874, $27 per gross; in 1875, $27 per gross; in 1876, $22.50 per gross; in 1877, $19.00 per gross; in 1878, $18.00 per gross; in 1879, three different prices, as follows: ninety-three gross at $18.00, 946 at $12.00, and 591 at $10.00.

11. When were the deliveries of the $18 lot, before or after the reduction of price in March?

A. They were doubtless contracted for before, but I cannot state whether they were delivered before or not; I should say before.

12. Were those three prices of 1879 all paid to the same parties, and if not, to how many contractors, and who?

A. They were not paid to the same parties. They were paid to two parties. One party was the Lamb Knitting Machine Company, Chicopee Falls, Mass. The other party was the Penn Hardware Company, of Reading, Pa.

13. Have you examined the schedules filed before the Master, and can you say how many of the egg-beater customers of the Dover

Company at or before the time of defendant's sales to them appear on those schedules, and what proportion of the sales of the defendant's egg-beater were made to such customers of the complainant?

A. I have examined the schedules very carefully; there are two hundred and ninety odd names upon the schedule, of which, previous to July, 1876, one hundred and ninety-seven were our customers; one hundred and fifty one of those names were our egg-beater customers, and of the names that make that one hundred and fifty-one, purchased 1,200 and 1,300 gross of the egg-beaters of the 1,500 gross they admit they have sold; more than those names are our egg-beater customers, but we made no examination back of 1873 to make any figures on it at all.

158 14. Have you prepared, and will you produce a schedule containing a list of your customers which you found among the Master's schedule?

A. I have, and this is it. (Schedule produced, and marked Dover Stamping Company's customers.)

15. Some of those names are checked with the sign of square root, and some with a +; what do these marks refer to?

A. The sign of the square root are of our customers which we find on their schedule, one hundred and ninety-seven of them; and those marked with the +, are not on our books from 1873 to 1876.

16. How largely had these customers of yours bought egg-beaters of you during the period from 1873 to 1876, included in your examination of your sales?

A. 901 gross.

17. Have you been at any considerable expense in marketing and defending the Dover Egg-beater, other than was included in the cost of manufacturing and distributing it, as other goods are distributed; and if so to what expense, and how incurred?

A. Yes; our patents have cost to fortify by the purchase of patents connected with it, together with our law suits, and advertising, not including the many beaters given and the expenses of traveling salesmen, about $48,000; above that if anything.

[This question and answer objected to by defendant's counsel as irrelevant.]

18. Have you estimated from the facts you have already testified to, the damage done to your egg-beater business by the defendant's competition; and if so, will you give us that estimate with its details?

A. We are confident that the damage to us by the presence in the market of defendant's manufacture of egg-beaters is over $100,000. Our sales of egg-beaters from January, 1876, to January, 1880, were near 4,500 gross, about 3,000 gross of these were sold with the discounts before named, and our loss, by selling them at $42 with the discounts, instead of $60 net was about $80,000.

159 About 1,000 gross were sold at $42 net; on these we lost, because we could not sell at $60 net, $18 per gross, or $18,000,

making a loss while we sold on a $42 basis of $98,000. The further loss because of the reducing the price to $36, on our sales of about 500 gross, of about $5.40 per gross, making $2,700. I am confident that our profits have suffered over $100,000 by the presence in the market of the Washington and Family beaters made by the defendant.

19. In your schedule of customers appears the name of Willis Churchill, and in the defendant's list appears the name of Charles Churchill; please state whether or not the Willis and Charles are the same house; and if so, how it comes that it is called sometimes by one name and sometimes by the other.

A. Willis Churchill, of New York, was the purchasing agent or partner (I never knew which) of Charles Churchill, of London. In his transactions with us he always bought for Charles Churchill, and the condition of our sales to him was always that he should ship them out of the country to Charles Churchill, or to somebody else.

20. Are there any other names on the list you have produced that represent the same houses as somewhat different names in the Master's Schedule; and if so, state what they are.

A. There are; for instance, the house of the United States Stamping Company of New York city and Connecticut; they were not in business in 1876; their predecessors were Joseph Scheider & Co., to whom we sold egg beaters quite largely; the house of Coulter, Flogler & Co., of New York, we sold to as Watts, Coulter & Co., their predecessors; we sold to the predecessors of Dennsber & Co., of Pittsburg, Pa.; Pulsten & Morhouse, of Detroit, Mich.; to the predecessors of Punter, Lamb & Co., of Chicago; their predecessors, Bunter, Lamb & Belden; the predecessors of Asten & Hough, of Columbus, O.; Griswold & Richmond, of West Meriden, Conn.; I cannot name the style of their predecessors; the predecessors of Strong, Hackett & Co., of St. Paul, Minn., which was Strong, Hackett & Chapin; the predecessors of Schroos & Co., of Cincinnati, O.; I cannot name their predecessors.

Cross-examined by Mr. BEACH:

X 21. You say that the complainants do not manufacture
160 the egg-beaters they sell; what is their business; what do they manufacture?

A. They manufacture the whole variety of deep and common stamped ware, japanned ware, toilet wares, painted toilet wares, tinsmiths' trimmings, forgings for various trimmings, solder coppers, warm air registers, coal hods, a variety of sheet-iron wares, tea trays, making in all about 4,000 different articles. I could not enumerate them all.

X 22. Taking the amount of sales as a criterion, of about what proportion of the business of the company does the egg-beater business consists?

A. In 1876 it was approximately 1–20.
" 1877 " " about 1–15.
" 1878 " " " 1–15.
" 1879 " " " 1–17.

X 23. You have given us the statement that for four years you held the price of egg-beaters up to $60 per gross. What years were these?

A. From June, 1872, to February, 1876, our price was $60 per gross, net.

X 24. What number of gross did you sell in 1872?

A. 660.

25. How many in 1873?

A. 644.

26. What was the cost in 1872?

A. $33 per gross was what we paid for them.

27. What did they cost in 1873 per gross?

A. $33.

28. In giving the prices at which the beaters were sold, beginning with the first of the year, 1874, down to the present time, you have made a division of four more periods. Were the prices uniform during those respective periods, except as varied by discounts proportioned to the amount sold?

A. They were uniform. I cannot say that there was no one exception. I do not wish to swear to that; there may have been exceptions, but they were very few, if any. I, myself, started the price of egg-beaters, and recollect of no variation in the United States, where we owned the patent; it is not intended to cover our prices on our sales abroad.

161 X 29. Are there any persons who have continued to be purchasers of egg-beaters from the company during the entire time covered by these four periods?

A. There are.

X. 30. Will you please give the names of a few of them, and where they reside?

A. E. Ketcham & Co., New York city; Lauderbach, Gilbert & Co., N. Y.; F. H. Lawson & Co., Cincinnati, O.; Holbrook, Merrill & Co., N. Y. and San Francisco; B. Horton & Co., St. Louis, Mo.; Hibbard, Spencer & Co., Chicago; Russell, Erwin & Co., New York city; Russell, Erwin & Co., Philadelphia; The Biddle Hardware Company, Philadelphia; Sidney Shepard & Co., Buffalo; Joseph Scheider & Co., and successors, New York city.

X 31. In giving the number of beaters that the company sold during these several years, do you, or not, include those that were sold either by you directly to foreign customers, or those sold under stipulation to go abroad, or both?

A. In making up my figures I made them up including all that were sold, but I did it inadvertently, and it did not occur to me till yesterday afternoon; but it makes but very little difference in the results, as I remember the transactions for each succeeding sale

abroad was made under the pressure of the same competing influence. I cannot state without the books of the company the price to prove my opinion correct, and the figures might prove my opinion correct.

X 32. Can you tell us about what proportion of the egg-beaters sold during those years by the company to go abroad, bore to the whole number sold?

A. I must furnish it as an opinion, I cannot possibly state; but I think we have sold 800 gross beaters abroad during the whole term; it may be less, it may be more: that is my best judgment in the matter.

X 33. What do you mean by the whole term, beginning with what year?

A. 1872.

X 34. To what foreign market have these 800 gross, more or less, been exported?

A. Chiefly to London, some to Hamburg; to those cities we have sold the prominent lots that are in my mind.

162 X 35. Is there, to your knowledge, any patent on the Dover Egg-Beater, so called, either in England or Germany?

A. I know of none.

X 36. Do you know of any egg-beaters, having the characteristics of the patent, being manufactured in Germany or England, or any of its provinces or dominions, between 1875 and 1879?

A. No.

X 37. Omitting the limitation of time, please answer the question.

A. I have seen an egg-beater, sent to me from London, in general appearance like the Dover Egg-Beater, and have been told that large lots of it were made, and have seen an egg-beater, said to have been made in Canada, in the institution of correction, but having heard of its being made of late years, I cannot tell when they made them, but have been told that they have ceased to make them, and I do not seem to remember to have seen or heard anything of them since 1874 or 1875.

X 38. Did you never see more than one of the beaters said to have been manufactured in Canada, having the characteristics of the patent?

A. I remember but one, and I have that in my egg-beater museum.

X 39. Were you told, or otherwise informed, of the price per gross at which they were sold in Canada?

A. Yes, I have been informed that they were sold at $35 per gross, $33 per gross, and $30 per gross, and I have heard it surmised that they were sold less, but I have no intelligence that substantiates it.

X 40. Did this information, as to those three different prices at which the beaters were said to be sold in Canada, and surmises as

to their being sold at a less price, all come to you at one time, or at different times?

A. At different times.

X 41. Can you fix the date of all or either of these times?

A. I cannot.

X 42. You say you cannot now give us, without reference to your books, the number of gross of the Dover Egg-Beaters which were sold by the company during the period spoken of
163 for export; will you please examine your books to enable you to inform us upon that point at a future meeting, and also the prices at which they were sold, and to whom, and the dates of such sales?

A. With pleasure; I will do so.

X 43. Who made the 946 gross of beaters in 1879, costing the company $12 per gross?

A. The Lamb Knitting Machine Company.

X 44. You have stated the date in answer to int. 6, when the competition of defendant began, and in answer to that part of the question asking when it ceased, you say that it still continues; what do you mean by that?

A. I mean that I have not known the time from 1876 to present time when the jobbers and dealers did not have on hand the egg-beaters made by defendant and for sale.

X 45. Do you mean to be understood that the defendant is now, or since last November, has been manufacturing and selling egg-beaters with cutting edges?

A. I do not mean to be understood that the defendant is making and selling the Washington or Family Egg Beater.

X 46. Then when you speak of jobbers and dealers having on hand at the present time, beaters made by the defendant which compete with the Dover Beater, you include among such competing beaters structures not having cutting edges, do you?

A. I mean primarily and chiefly the Family Egg Beater, possibly some Washington, but mainly Family; I mean nothing else in answer.

X 47. What do you mean to be understood by the Family Egg-Beater?

A. This article which I now show, having these cutting edges, marked Family on the wheel.

X 48. You say, in answer to Int. 9, that after the opinion of the U. S. circuit court for district of Connecticut, was published, the demand for the Dover Beater increased for about two months; have you the figures showing the monthly sales for any period succeeding the publication of that opinion?

A. I have not, and only have the sales in that period in my memory, because of their remarkable character.

X 49. Will you be prepared to give those figures at a future
164 meeting, beginning with July, 1879, and for the next succeeding nine months?

A. I shall be very glad to do so.

X 50. Coming now to the schedule marked Dover Stamping Company's Customers, who furnished you with the schedule containing the names of those who had made purchases form the defendant?

A. My counsel.

X 51. You speak of certain houses or firms in that schedule as being customers of the Dover Stamping Company; you do not, I suppose, mean to be understood they were, or are customers of that company, in the sense that they made their purchases from them exclusively?

A. Certainly not.

X 52. They are dealers in other articles besides egg-beaters, I suppose?

A. I so understand it, and so know them so far as I do know them.

X 53. And do you not also understand that they deal in egg-beaters other than those purchased either from the Dover Company, or from the defendant?

A. I understand that it is possible that they may, but I do not know it in many instances; but they may without my knowledge.

X 54. Referring to this schedule, you say, that among the names it contains there is a certain number who are customers of the Dover Company, in purchasing their goods, including egg beaters, and you fix that number at 197. Is there any mark or sign appearing on the schedule showing which of these were egg-beater customers?

A. I am afraid to answer that question; since I left home my mind has been so pre-occupied with the matters in hand, and this schedule was presented to me at such a brief period before I left, that I prefer not to be very explicit about that; it was hastily conned by me, and I would like the privilege of placing the peculiar ear marks upon it at the next hearing, or another hearing.

X 55. Leaving that subject then for a future hearing, and coming now to your computation of damages, you say that you sold egg-beaters in 1872, 1873, 1874, 1875, at $30 a gross; that in 1872 and 1873, they cost you $33 per gross. In 1874 and 1875 they cost you $27 per gross. You also say that in 1879 you sold the same beaters at $42 per gross, these costing you from $10 to $12 per gross. Your estimate of the damages, as given this morning, proceeds, does it not, on the theory that your selling price would, but for competition, have remained the same, irrespective of the difference in the cost of manufacture?

165

A. It would have remained the same, just so long as the public would have paid that price for them.

X 56. And I suppose if you could have found a demand equal to your power to supply for the beater, at the rate of $100 per gross, you would have put them at that price as long as the public would pay that price for them, would you not?

A. That takes me into the air, somewhat out of my orbit. It is a proposition that has never been considered by me. I think it is a proper question to be considered by my board of directors.

X 57. Taking the first day of January, 1876, as a dividing point, separating the period of which you have spoken into two parts or periods, and referring to the list of manufactured articles which you gave us this morning as being a part of the manufacture of the Dover Stamping Company, which, if any of them, brought in the market during the later period a price equal to that they were sold at during the three or four years preceding the first of January, 1876, whether they were patented or otherwise?

A. Yes, sir; the Dover Can Spout, a patented article of tinners' trimmings; the Dover Sprinkler Head, another patented article; the Dover Match Safe, another patented article, but that did not antedate 1876 much. I can name no more which did not feel the influence. These are Dover characterists that stood by us; I think there are many other articles.

X 58. Is it not true, as a general proposition, that all manufactured articles, patented or otherwise, failed to command in the market during the period succeeding January 1st, 1876, so high a price as they did during the three or four years preceding that time?

166 A. I do not think it as a whole proposition true. Patented articles in a great measure sustained themselves. I know that some of our articles did, and I was not aware that sewing machines went down till the patent expired; or that the Lamb Knitting Machine has ever been lowered in price. It is generally true that all manufactured goods not patented, fell off in price.

X 59. When you refer to sewing machines do you speak of any particular patent as controlling the keeping up of the price until its expiration?

A. My impression has been gathered from what I have been able to know of the Singer, the Wheeler & Wilson, and the Davis in our market. I do not wish to state that they did not recede in price.

X 60. Do you know whether they did or not, in fact, recede in prices.

A. I do not; only give it as an impression.

L. BACON FOSS.

Subscribed and sworn to, this 14th day of April, A. D. 1880.

E. E. MARVIN, *Master.*

Adjourned to May 6, 1880, 10 a. m.

NEW HAVEN, *May* 6, 1880.

Parties present as heretofore.

Mr. John G. Brothwell recalled:

1. Thomas C. Page, in his testimony given the other day, estimates that the percentage of labor on the Washington and Family

Egg-Beater is fully ten per cent. less than the cost of labor on the Dover Beater. Will you please state, first, what your means of knowledge are upon this subject?

A. As superintendent of the defendant, I have had charge of manufacturing the Family, Washington, and Dover Beaters.

167 To the best of my knowledge it was in 1863 or 1864 that the defendant manufactured the Dover Beater.

2. Please compare the cost of labor on the two beaters, and if there is any difference state wherein it consists.

A. The small gears to the Dover mash into the upper side of the wheel; in the Family and Washington they mash in both the upper and lower edges of the wheel, making the drilling and milling of the castings in Washington and Family beaters more complicated in their adjustment than they are in the Dover beater. The holes drilled for the round wire in the Washington and Family beaters must be in perfect alignment with the wheel, in order to have both gears work accurately in the teeth of the wheel, which is not necessary in the Dover beater. In drilling the lower gear of Washington and Family, the hole must be reamed to gauge, as that is the only means employed in attaching that gear to the round wire, which must be driven in. The wheel and handle of Washington and Family must be milled, so as to bring them in accurate alignment with the gear, which is not necessary in the Dover.

3. Is there any, and if so what, difference in the cost of labor between the two beaters, growing out of the difference in the hardness of material to be drilled, and what is the reason of that difference if it exists? I don't speak now in reference to the beaters as a structure, but as to the material as used by Mr. Page's concern and that used by defendant.

A. Our greatest difficulty in making castings for our beaters lies in our iron being hard—the result of the class of goods that we make being very light in weight. In order to make from 1,800 to 2,000 pounds of our castings, as they run, we have to melt from 5,500 to 6,000 pounds of iron, making our sprue and gates so much in excess of our castings that our work is continually coming hard, necessitating a greater amount of labor in both drilling and milling our castings. My experience with the Washington and Family Beater has been that wheels and handles which we could drill I have found impossible to mill on account of their hardness; consequently they were wasted and thrown into scrap.

4 What is done with the sprue and gates that results from your small castings?

168 A. It is remelted, and of course refined, and hardens our casting. In melting the iron for these small castings it becomes more and more refined and harder the more you melt it over.

5. I don't propose to ask you to repeat the testimony you gave the other day, but by way of illustration, I will call your attention to the statement made by Mr. Page, that on the Dover Beater as made by him by contract with the plaintiff, a man earning $1.25 per

day will drill about 1,000 wheels. How does that compare with the experience of the defendant in drilling their wheels?

A. My experience is that a man will drill from 300 to 400 of the Washington and Family wheels a day at $1.50.

6. He says, too, that a man earning $1.50 per day, working by the piece, drills 1,000 handles a day. Compare your experience with that statement.

A. On the Dover Beater, I should think a man would drill that amount a day. On the Washington and Family Beater, I pay a man $1.50 per day. He drills from 200 to 300. The difference in the two beaters is in the accuracy of the labor required on the Washington and Family Beater; we have two holes which are an inch and a half a part, which must come in perfect line with the gears; on the Dover no such accuracy is required.

7. I believe these are the only two items as to which Mr. Page gives figures as to the cost of labor, but he speaks in giving his estimates of what he thinks a fair price of the cost of milling wheels, is that as you understand it, an item involved in the construction of the Dover Beater?

A. I do not consider it necessary to mill the wheels in making the Dover Beater, from the fact that the small gears mash into only one edge of the wheel, and the fact of the wheel having a play of one thirty-second of an inch on the hub makes no difference with the running of the beater.

Cross-examined by Mr. CLARK:

X 8. When did you make the determination about the work of a man drilling the Washington and Family wheels spoken of in answer to Int. 5?

A. I cannot give you the exact date; I am making such observations continuously in my work.

169 X 9. Can you give me the man's name on whose work you made that determination?

A. I cannot; I am changing my men that work on different parts of the beaters frequently.

X 10. Can you give me the details of the calculation from which you got that result, and when they were taken?

A. I can give you the details of it, but perhaps not the time; sometime I will give a man one gross of egg-beater wheels to drill, and take account of the time he is on them; at other times I will take a man's day's work on drilling wheels, of what he does in ten hours; at other times a man may work on wheels for a week, and I will take account at the end of the week.

X 11. Will you give me the figures of either one or all of these accounts, and the name of the man or men, and the time when you took it, or either of these items?

A. I cannot give you the time, I can give you one or two men's names who have worked in drilling wheels; they are Mike Cummings, Wm. O. Mara; they have drilled from 300 to 400 per day.

X 12. From what memorandum did you make up the paper which you consulted just now, and when was it made?

A. I keep an accurate account of the work accomplished in the factory on a book I keep for that purpose, which I refer to in regard to cost of articles that we manufacture; the date that I drew this memorandum from that book I cannot give you; in some branches of our factory, I can go back from three to four years, and give you the amount of labor performed every day, whether piece work or day work; I take this means of getting at the cost of labor on almost every article we produce.

X 13. Can you not tell me in what year this original memoranda was made in the factory book?

A. I cannot; I am continually making these memoranda; if I find an article that we are manufacturing is costing us a certain amount at such a time, I follow it along at other times, and by different labor, and get my costs in that way.

X 14. Do you mean by that, that you have several memoranda about the cost of labor on egg-beaters running through a series of years on your factory book?

170 A. I do not; not on my book of actual cost.

X 15. Have you any?

A. I have.

X 16. Was it made before the 1st of January, 1879?

A. I think it was.

X 17. Is there more than one such memoranda?

A. I think there is; I won't be positive about that.

X 18. Have you any other memoranda about the cost of egg-beaters made while you were manufacturing egg-beaters before July, 1879, on other books than your book of costs?

A. I think I have.

X. 19. Do they vary in any respect from each other as to the cost of any part of the work?

A. I should presume they would, although I am not able to state positively.

X 20. Will you produce for the inspection of the master, each, every and all of those original cost memoranda, and fix the date at which they were made, respectively, as near as you can, at some adjourned meeting hereafter?

A. I should be pleased to do so, as far as I can.

Adjourned to May 18, 10 A. M.

NEW HAVEN, *June* 18, 1880.

Accounting continued.
Parties present as heretofore.

John E. Earle sworn:

1. Have you been sworn as an expert in this case?

A. I have.

2. Are you familiar with the patent issued to Timothy Earle, reissued July 15, 1875?

A. I am.

3. Will you look at the exhibit, marked Earle Exhibit No. 1, and say if it correctly represents the structure described in the specifications and drawings of the Earle patent?

A. It does.

171 4. Are you acquainted with the patent of Turner Williams, No. 103,811, May 31, 1870?

A. I am.

5. Will you look at the exhibit now shown you, marked Dover Beater, and say if that is a correct representation of the invention therein described and claimed?

A. It is, substantially.

6. What, as you understand, is the advantage described and claimed as peculiar to the Dover Beater?

A. The Dover Beater has two beating frames revolving in opposite directions and on different axes, so that the orbits and path of revolution of the frames intersect and cut each other twice in each revolution. The advantage of this arrangement of beaters over beaters known prior to the Dover Beater, and in which there were two beater frames arranged upon the same axis, and so that one revolved within the other, the path of one never crossing the path of the other, but moving in two concentric circles, is that, whereas, in the old beater last described, if the revolution be rapid, each of the two beater frames will form its own path, and carry the material in two circles, one outside the other, and without materially disturbing the matter through which they move. If they be turned slowly, so that the matter through which they move may readily fall in behind the advancing beater, then the material will be thoroughly stirred or beaten, so that for successful operation the velocity with which the old beater frames may be revolved is limited.

In the Dover Beater, *i. e.*, the Williams invention, the two beater frames revolving in different paths in opposite directions, constantly cutting across the paths of each other, the circle formed by the revolution of each is constantly broken, and the more rapid the revolution the more frequently is the material cut and broken, so that the more rapid the revolution becomes the more rapid and better will the work be done. This increased rapidity and better work is the chief advantage due to the Williams patent.

This advantage is clearly defined in the specifications of the Williams patent, in the following words:

The advantage of having two wheels (beating frames) operating in the same space, and revolving in different directions, is
172 that the fluid being acted upon, is cut and thoroughly beaten almost instantaneously, as it cannot partake of the revolving motion of the beating frames, and thus escape the beating action of the frames, as it does in other egg-beaters of this class.

7. Do you understand that cutting edges are described as a sub-

stantial part of the advantages peculiar to the invention, as embodied in the Dover Beater?

A. No, sir, I do not; for the reason that in the description, care appears to have been taken to include other forms of beater frames. The shape of the frame is not described other than as revolving; again, in describing the operation, it is said "the beating frames will be revolved rapidly in opposite directions, each cutting or beating."

8. Have you had an opportunity of becoming familiar with the construction and operation of different styles of egg-beaters?

A. I have.

9. In what feature or features does the value of the Williams invention, as embodied in the Dover Beater, consist?

A. First, a firm foot or rest, on which to support the beater; second, in causing the beaters to revolve on different axes parallel to each other, in opposite directions, and so that the path of the one must cross the path of the other in revolving.

10. You do not in your answer include the cutting edges among the features giving value to the Dover Beater; is that omission accidental or intentional?

A. It is intentional. I no not understand that a cutting edge in the Dover Beater is at all essential; on the contrary, round wire frames arranged like the beating frames in the Dover Beater, will do as good and rapid work as a thin flat frame. As another comparison between the Dover Beater and the previous double framed wire beaters illustrating this invention, with round wire frames revolving concentric with each other, the resistance to the revolution is greater than to a thin cutting edge, hence the tendency to cause the material operated upon to partake of the motion of the beating frames is very much greater than in frames presenting a thin or cutting edge; whereas, in the Dover Beater, the revolving beaters cross the path of each other so frequently that the thickness
173 of the edge presented is immaterial, because whether it be broad or thin, the material operated upon cannot partake of the revolving motion of the beating frames.

10. Putting the Earle Beater as represented by Earle No. 1 and Earle No. 2, by the side of the Dover Beater, what do you say as to their comparative value as articles adapted for sale in the market?

A. I do not think that either of the Earle Beaters could be sold at all beside the Dover Beater, unless there be a very great difference in the price of the articles so great as to practically prevent the sale of the Dover Beater; this certainly would be the case if the person purchasing were at all familiar with the use of mechanical egg-beaters.

11. Are you acquainted with the egg-beater patented to Edwin P. Munroe, April 19, 1859?

A. I am; this of the class of beaters to which I have referred as concentric wire beaters.

12. Will you please read a description of the difference between

the operation of the Munroe Beater and that of the Dover Beater as given by Mr. Hibbard, on page 10 in the printed record of the suit of Edwin P. Monroe *vs.* The Dover Stamping Company, in U. S. court for district of Mass., which is as follows:

"The placing of the beaters with their axes parallel at some distance apart, is not a mere formal difference, but is very important, as it relates to the efficiency of the machine, because by the crossing of the orbits of the blades all rotation of the matter operated upon is prevented, and the power of the blades to cut up the material is very much increased and the work facilitated.

"The tendency in the use of the Munroe machine is to form the eggs or other matters into two concentric layers which are carried around in opposite directions by the beaters, each beater or bar of the beater following in the track of its predecessor, and this is true of both the interior and exterior beaters; and in practice the material ranges itself mainly in two concentric layers, which are carried round with each beater, and by the centrifugal force; if the matters are of the same viscidity they will accumulate more or
174 less around the circumference of the vessel. But in the Dover Beater this action does not take place for the reason that blades of the beaters do not follow in the same track with relation to the matter operated upon for the reason that the orbits of the blades intersect in two points in their circumference, so that after the blade of one beater has passed through the material, the material is again passed through by another beater moving in another direction, which obliterates the track made by the first, and so on alternately.

"This is very much more obvious to the eye in witnessing the experiment with the two machines than can be readily stated in language.

"I have seen the experiment tried both upon eggs and also in a vessel of water having mustard seed floating in it by which the effects of the beaters upon the liquid are very readily seen.

"These experiments also showed that by reason of this difference in the plans of the machines the operation of the Dover Beater was very much more efficient than the other, and its convenience and use in the kitchen is also much greater than the other in my opinion. For these reasons I am clearly of the opinion that the Dover Beater is substantially different from the Munroe Beater in construction, mode of operation, and result, not merely as a difference in degree or a difference in form of the parts, but as embodiments of different plans of construction and modes of use," and say, first, whether you do or do not agree with Mr. Hibbard as to the details of those differences.

A. I do agree with him fully and entirely.

13. To what extent do these details of differences in the Munroe Beater from the Dover apply to a comparison of the Earle Beater with the Dover Beater?

A. They are the same, but the Earle Beater having but one re-

volving beater frame instead of two, as in the Munroe, gives the Munroe frame possibly some advantage over the Earle Beater, but yet in the Earle Beater the material will partake of the revolving motion of the beater frame to about the same extent as in the Munroe, therefore I say the differences are the same.

14. To what extent do these details of differences, as described by Mr. Hibbard, between the Munroe Beater and the Dover Beater, apply to a comparison of the Family and Washington Beaters with the Dover Beater.

175 A. The same.

15. If in the Dover Beater there should be substituted for the interlacing blades of flat wire interlacing blades of round wire, would the same details of differences between the Dover Beater and the other beaters referred to still exist, or would they disappear?

A. They would still exist.

(Cross-examination waived.)

JOHN E. EARLE.

Sworn to and subscribed before me, this 18th day of June, A. D. 1880. E. E. MARVIN, *Master.*

Mr. F. E. Young sworn:

1. Where do you reside?

A. Brooklyn, N. Y.

2. What is your business?

A. Superintendent of a tin manufacturing establishment.

3. What opportunity have you had during the past three years of becoming acquainted with the different styles of egg-beaters that have been upon the market during that period, having cutting edges as part of their construction?

A. By being in the tin, house furnishing, and hardware line since 1873.

4. Does that line of business include the manufacture and sale of egg-beaters?

A. It does directly.

5. Will you mention some of the different kinds of egg-beaters with cutting edges which have been upon the market for sale during that period?

A. Dover, Family or Washington, Twin, Propeller, Peerless, Centrifugal, Vortex, Star, and the Earle; that is all that I can call to memory now. I see some others on the table; you may add The Best of All.

6. If among these different styles there is one more manufactured by the concerns which you have been with, illustrated by any of the exhibits on the table, will you please select it and say what it is called?

176 It was catalogued by J. Scheider & Co. as The J. S. &

Co. Beater. The same I have noticed in an article in the newspapers as being called The Twin.

(The egg-beater referred to by the witness put in evidence and marked J. S. & Co. Beater.)

7. From your experience with and knowledge of egg-beaters, in what feature does the value of the Dover Egg Beater, as illustrated by the egg-beater now shown you, and marked Dover Beater, mainly consist?

A. In the interlacing motion of the outside frames.

8. To what extent would the substitution of interlacing blades of round wire for the interlacing blades of flat wire impair the efficiency of the Dover as an operating beater?

A. I think that it would improve it. It would certainly do it no harm.

9. Will you please look at the exhibits now shown you, marked Earle No. 1, and Earle No. 2, and say what, if any, value they would have had during the past three or four years as marketable egg-beaters?

A. None whatever, unless they could be purchased for a mere song—the No. 1 especially.

Cross-examined by Mr. CLARK:

X 10. Are you still employed by Joseph Scheider & Co.?

A. I am not.

X 11. How long ago did you leave their employ?

A. January, 1879, at the dissolution of the firm.

X 12. When did J. Scheider & Co. make the J. S. & Co. Beater first?

A. I think it was introduced the latter part of 1877, and through the whole of 1878.

X 13. Did they cease making before you left them?

A. I understood so.

X 14. How many did they make, if you know?

A. I can't state the exact quantity, but I can count up a hundred gross at least; how many more I can't say.

X 15. At what price were they sold?

A. The bulk of them between $20 and $24 per gross.

177 X 16. Did the firm of J. Scheider & Co. deal in all the egg-beaters you have mentioned?

A. Not all.

X 17. What ones?

A. Dover, Peerless, Star, Family; that is all I can call to mind just now.

X 18. The Peerless went out of the market in 1877, did it not?

A. That I couldn't say.

X 19. Who made that?

A. That I can't recall now; I think it was made in Newark, by Munroe.

X 20. Who made the Star?

A. I think that was made by Munroe.

X 21. The Star Beater went out of market before the J. S. & Company Beater was introduced, didn't it?

A. It did; that is, we could not purchase it. I suppose they went out of the market then.

X 22. How many Centrifugal Beaters did you ever see in all?

A. That is a hard question to answer. I never had hold of more than one or two. It was a sample offered for sale. That is about all, I think.

X 23. The sample you say offered for sale you saw before 1875, didn't you?

A. I don't think I did.

X 24. Have you ever seen a sample of Centrifugal offered for sale since the first part of 1876?

A. I think I have.

X 25. When?

A. I can't locate it exactly; I don't think it was by the manufacturer, either. Perhaps it was some stock.

X 26. To whom was it offered?

A. To me.

X 27. How large a lot?

A. That I could not say; couldn't have been many. Perhaps it was a job lot.

X. 28. Did you ever know of a Centrifugal Beater being bought for use?

178 A. I did not.

X 29. When did the so-called Best of All first come under your attention?

A. I think some time during 1877.

X 30. Did you ever know of that being bought for use?

A. I did not.

X 31. When did you first know about the Vortex?

A. The latter part of 1878, I judge; you may say the middle of 1879; that will cover it; save I knew that they were then ready to deliver, so they said.

X 32. When did you first know the Propeller?

A. I think, the early part of 1878.

X 33. Did that have a large sale?

A. I can't say.

X 34. Don't you consider the edges of the blades in the Propeller rather thick to be called cutting edges?

A. No, sir; I do not.

X 35. You would call a round wire of that thickness a cutting edge, would you?

A. I would; that is, I would claim that it would do the work as well as that sharp edge on the Propeller.

X 36. Do you think that the Propeller blades, with the perforations made in them, and with their crooked edges, are fairly de-

scribed as plain thick blades, in the sense in which these words are used about the Earle, Dover, Star, Peerless, Washington, and Family Egg-beater blades?

A. I do not.

Mr. BROOKS, sworn.

1. What is your name?

A. Heman B. Brooks.

2. Where do you reside, and what is your business?

A. I reside in Waterbury, Conn.; and I am a manufacturer, and reside in New York city; make egg-beaters for one thing.

3. How long have you been familiar with the different style of egg-beaters on the market?

A. I have been familiar with the Dover Beater, I suppose, ever since it has been in the market, up to the present time.

179 4. Have you also been acquainted with the Earle Beater, as represented by the Exhibit Earle No. 2?

A. I should think about a year or two, I can't say exactly.

5. Did you ever see a beater on the market as represented by Exhibit Earle Beater No. 1?

A. No, sir; the first time I ever saw it, was about a month ago.

6. Will you please look at these articles, marked Earle No. 1 and Earle No. 2, and say what, if any, value they would have had during the past three or four, or four or five years, as marketable egg-beaters?

A. No. 1 I don't consider of any account at all; I don't think it would sell at any price; No. 2 I think could have been sold very well for a second rate beater, or third, for something.

7. It is claimed by the Dover Stamping Company, that they have sold during the past five years large quantities of the Dover Beater, and at a large advance over their cost; I assume this to be true, and I want to know from you, as being familiar with egg-beaters, and especially as having known the Dover from its origin up to the present time, whether these large sales and large profits were due to the fact that the blades of the Dover Beater have cutting edges, or to some other, and what peculiarity of construction?

A. I don't think it is due to the cutting edges, I think it is due to its peculiar construction.

8. Will you please describe the peculiar construction to which you refer?

A. I mean that that construction of the Dover Beater is such that it operates on the whole mass almost constantly, which no other beater does do, or can do.

9. What enables the blades of the beater to operate upon the whole mass almost constantly?

A. It has the peculiarity to draw to the center all the time, while most of other kinds throw it to the outside of the bowl, consequently they operate on little of the material at the time.

10. Is it the interlacing motion of the blades that enables the Dover Beater to accomplish this result?

A. I think it is, without any mistake.

180 11. If you should substitute for the interlacing blades of flat wire having cutting edges, interlacing blades of round wire, what would be the result so far as enabling the machine to act on the whole mass almost constantly?

A. It would have exactly the same result, provided the wire was as thin, and perhaps it would, if it was thicker.

12. Do you mean to say that if round wire were substituted for flat wire in the Dover Beater, that it would not impair its efficiency as an egg-beater?

A. It would be quite as good, or better.

Cross-examined by Mr. CLARK:

X 13. What egg-beaters do you make?

A. I have made three different kinds. The first I made I did not give it any name; I only made a few; the second one I made was called the Crown Beater, and I sold about 150 gross of them; the last one is called the Globe Egg-beater, which I manufacture now, and have sold about 200 gross of them.

X 14. Did either of these kinds have thin plain blades like those used on the Family or Washington?

A. No, sir; neither of them.

X 15. Did either of them work with a cog-wheel and pinion?

A. No, sir; they all worked with a vibrating motion.

X 16. Operated by a reciprocating nut on a screw thread?

A. Two of them did.

X 17. How was the other vibrated?

A. With a belt.

X 18. When did you begin to make these egg-beaters?

A. About three years ago, three and a half.

X 19. You give the opinion that the Dover Beater would be just as good with round wire frames as with flat wire frames, simply as an opinion, don't you?

A. I derive my opinion from the reason that I can't see why there should be any difference in the width of the frame, whether it is one-sixteenth of an inch wide, or a quarter of an inch wide, mechanically speaking.

181 X 20. Don't you think that the fitting of beating floats on to the stationary frame would be a little more frail if the hole for the frame were bored in a round wire one-sixteenth inch in diameter than it is when bored in flat wire as now used?

A. Well, that would be so if you was to bore it, but that is not necessary to do that; a turn in the bottom of the wire would make a hole without boring it.

X 21. And a turn in the bottom of the wire would also make a little recess difficult to clean, wouldn't it; at any rate, more difficult than the present construction?

A. In either case there is a hole to clean, where there might something stick.

X 22. You would then think that there would be just as easy a job, and requiring as little care in cleaning out the one egg-beater as the other, would you?

A. Oh! the difference would be so slight that you could never tell the difference, I don't think, whether it took a quarter of a minute or an eighth of a minute. I don't think if I was going to construct it.

X 23. And do you also think that any little egg material that should get into the hole made by twisting the round wire float, would be as readily observed by Bridget or Katrina as it would if the hole was in a simple flat wire?

A. Well, I think this, that just one little shake in warm water would clean either of them, unless it was allowed to dry on.

Re-direct by Mr. BEACH:

R.-D. 24. You were asked by Mr. Clark whether, in saying that round wire would operate as well as flat wire in the Dover Beater, you gave a *mere* opinion. Did you ever see the experiment tried, and if so, when, where, and with what result?

A. I have seen the experiment tried this morning in this room. The result was, that the round wire beat two eggs sufficiently for frosting in one minute and thirteen seconds, while the same experiment with the flat wire did not give as good result as the round wire with the same velocity of speed, stopping after beating
182 the same length of time. The test of beating eggs for frosting is to beat them to such a consistency that when the eggs are beaten they will remain in the bowl if you turn it bottom side up. In the experiment this morning the eggs beaten one minute and thirteen seconds with the flat wire would run out of the bowl on turning it bottom up, and the others beaten the same length of time with the round wire beater would not.

R.-D 25. Is the beater now shown you, the one to which you refer as being the Dover Beater, with the round wire, producing the result which you have described?

A. It is.

(The beater shown witness put in evidence and marked Dover Beater round wire.)

Recross-examined by Mr. CLARK:

R.-X 26. How did you measure the comparative velocity?

A. I watched the operation as close as I could with both, and as near as I could judge, the same exertion was used with both.

Re-X 27. Was that the only experiment you ever saw tried with the round wire Dover Beater?

A. It is.

Mr. HENRY S. JENKS sworn:

1 Where do you reside, and what is your occupation?

A. I reside at Pawtucket, R. I., and I manufacture builders' hardware, &c.

2. Does the &c. include egg-beaters?

A. It does.

3. How long have you been engaged in the manufacture of egg-beaters?

A. Since the latter part of 1871.

4. Have you been familiar with the different style of egg-beaters that have been upon the market during the past five years?

A. I have.

183 Will you please look at the beaters now shown you, marked Earle No. 1 and 2, and say what value, if any, such structures would have had during the past five years as marketable and practical egg-beaters?

A. I never considered these beaters as of any value for use, as I think that beaters of that construction, no party would buy the second one, one would be enough. I have told my customers that I did not consider the single flat wire beater as worth the room it took up.

6. Have you been acquainted with the Dover Beater since it first came on the market?

A. I have.

7. Assuming the fact to be that large quantities of these beaters have for the last five years been sold at large profits, to what do you attribute these large sales and profits? I mean do you attribute them to the fact that the blade has cutting edges, or to some other peculiarity of construction, and if to any other, please state what it is?

A. I lay it wholly to the double movements of the beaters. I mean by the double movement, where two beaters are revolving in such a manner as to break up the currents that would be formed by the revolutions of a single beater, and I consider the thing against the Dover Beater is the cutting edges of the beaters.

8. You mean, then, do you, if the interlacing blades of the Dover Beater were made of round wire, instead of flat wire with cutting edges, that such substitution would be an improvement over the Dover Beater as now found in the market?

A. I think it would.

9. Do you find the Washington, or Family Beater the double movement to which you refer, as giving value to the Dover Beater?

A. I do.

Cross-examined by Mr. CLARK:

X 10. What sort of egg-beaters have you manufactured?

A. I have made a tripple beater, called the Centripetal, and a single beater. I had no name for that.

184 X 11. Are there specimens of either here?
A. Specimens of each are here.
X 12. Which are they?
A. These are the ones.
X 13. When did you make the Centripetal?
A. I began to make it 1871.
X 14. When did you stop making it?
A. In 1878.
X 15. How many did you make?
A. Less than a hundred gross; I can't state very near.
X 16. When did you begin to make the single beater?
A. In 1876.
X 17. Are you making it still?
A. No; I am not.
X 18. When did you stop?
A. During 1878.
X 19. How many did you make of that kind?
A. About 10 gross.
X 20. When did you discover that round wire was better than flat wire for the beating floats in these beaters?
A. I think it was in 1873.
X 21. You continued to use flat wire in the Centripetal and the single beater after this discover, didn't you?
A. I did.
X 22. Flat wire cost about three times as much as round, didn't it?
A. I think not, if I recollect right, not three times.
X 23. Twice as much?
A. It may have been twice as much, but I could not say positively now; I don't think it did.
X 24. Once and a half as much?
A. Yes.
X 25. Why did you use a more costly material to get a worse result in putting up your beaters?
A. At the time that I learned the fact that round wire was the best, I had, at a large expense, made tools and machines for forming the flat wire; I had already spent ten times as much for machines and tools for making the Centripetal Egg-Beater as I expected to. In changing from the flat wire to the round, I
185 considered that I would throw away money to do so. I did not then see how I was to make the round wire beater to my satisfaction, without its costing more than the beater made of flat wire, and I always considered that my time for making egg beaters would be short, and I did not want to go through the same experience again, that I had in getting up tools and machinery for making the Centripetal as it then was.
X 26. Have you made any egg beaters since 1878?
A. I have made a few of the single ones.

X 27. Why did you stop making egg-beaters like the Centripetal, in 1878?

A. The prices on egg-beaters were such at that time that the profits on the Centripetal would not warrant it.

28. At what price was the Centripetal sold?

A. From $36 to $48 per gross.

X 29. What was the price of egg-beaters when you stopped making the Centripetal?

A. The prices varied from $12 to $30 per gross.

X 30. What beaters were at $12?

A. I don't recollect the name, it seems to me that the White Mountain is one.

X 31. What were at $30?

A. The Dover, I was told by dealers.

X 32. The Dover's advertised price was $42, was'nt it in 1878, with five per cent. off for five gross lots, and ten per cent. off for ten gross lots?

A. I don't remember their prices at that particular time; I have heard prices quoted of the Dover Beater, by dealers, much less than their advertised prices.

X 33. Do you believe all that a dealer tells you about the prices which your competitors in business make for him on articles other than egg-beaters?

A. I do not; but in these cases I speak of I had reason to believe what was told me.

X 34. What reason other than what was tod you?

A. Simply confidence in the men.

X 35. What became of your egg beater machinery, and patent?

186 A. Most of the machinery I now have; the patent I now have.

X 36. Were you at any time threatened with suit by the Dover Stamping Company, for manufacturing egg-beaters?

A. Yes.

X 37. When?

A. I am quite sure it was 1872.

X 38. Never after.

A. Yes.

X 39. When?

A. Until 1874, I would hear from them every little while.

X 40. Were not almost all of the one hundred gross of Centripetal Beaters made and sold before 1875?

A. They were.

X 41. So that the manufacture of these beaters as a competition business ceased as early as 1875, didn't it?

A. Yes, I should say the latter part of 1875.

Mr. FRED. K. PHILLIPS sworn:

1. Where did you reside and what is your occupation?

A. Wolcottville, Conn., and I am traveling salesman.

2. In whose employment are you acting as traveling salesman, and for what period have you been so employed?

A. Turner & Seymour Manufacturing Company, and have been traveling salesman since September 1, 1878, and have been with them since April 1877.

3. Since September, 1878, and down to November, 1879, what portions of the country have you visited as their traveling salesman?

A. New England, and the Western States, and a part of Canada.

4. Among other articles which you sold for them, were egg-beaters included; and if so, what kind of egg-beaters?

A. I sold the Family Egg-Beater.

5. Did you deal with many customers who bought styles of egg-beaters other than the Family Egg-Beater?

A. I did, a good many.

187 6. And among the egg-beaters in which these customers dealt was the Dover one? and if so to what extent, if you know?

A. The majority of egg-beater dealers handled the Dover Egg-Beater.

7. From your experience as traveling salesman for the defendant during this period, I wish you would tell us, in your own way, to what extent, among the dealers whom you visited and to whom you sold, the Family Beater came in competition with the Dover Beater?

A. I never have been able to see that it came in competition with the Dover Beater at all, as I have never known any one to give up the sale of the Dover Beater for the Family Beater.

8. Did you ever come across a customer who wanted a Dover Beater whom you could persuade to take a Family Beater in lieu of it?

A. I never did.

Cross-examined by Mr. CLARK:

X 9. Did you ever try?

A. Yes, sir, I have, and have sold Family Egg-Beaters to persons who had not used them before, but did not without their carrying a stock of Dover also.

X 10. Do you mean to be understood that in your judgment the stock of Dover Beaters carried by the persons whom you persuaded to buy Family Beaters was in all instances as large as it would have have been if had you not exercised your persuasive art?

A. I have never been able to see that the people sold any fewer Dover Beaters on account of the Family than they have on account of any cheaper beater, and the people will always have a cheap beater of some kind.

X 11. Did your customers, in talking about purchasing egg-beaters and the prices they should pay for them, quote to you the

prices they said they could get Dover Beaters for, in talking over the price of the Family Beater made by you?

A. People are not in the habit of telling the price they paid for goods; but I suppose there has been cases when I have been told what I could buy the Dover for.

188 X 12. And this price named for the Dover was named to induce you to take less for the Family, wasn't it?

A. I presume it was the same way as would have been urged for the Vortex or any other beater, as the Dover has always been considered the best, and where the people purchase for the cheaper demand they want to get all the difference possible.

X 13. Did you ever lower your price for Family on account of one of those conversations where the price of the Dover was cited to you?

A. That is a hard question to answer; there are so many things that enter into consideration to induce a man to lower his price. I don't think I have lowered it any more on the account of the Dover than I have on account of the Star and some other beaters in the market.

X 14. You have lowered your price, then, for Family, after a conversation in which the prices of Dover or Star were cited you?

A. I have certainly sold beaters at a less price than the first price I quoted them at, but might have been influenced by other things besides that.

X 15. But you did lower your price after your customer had cited Dover or Star prices to you. I don't care whether that influenced you to do so; I only asked if the cestomers' quotation preceded the lower price made by you.

A. I don't remember any particular case, but presume I have.

Mr. L. G. TURNER sworn.

1. Where do you reside and what is your occupation?

A. I spend most of my time in New York; am secretary of defendant.

2. What opportunities have you had of becoming acquainted with the different styles of egg-beaters and the different markets in which they are sold?

A. Ever since our company have made egg-beaters I have been in the habit of selling them, travelling in all parts of the United States, and also in being in charge of the store in New York for the past two or three years.

189 3. Prior to the last two or three years, what was your employment?

A. Mostly traveling; part of the time in New York, of course; but mostly traveling.

4. When did the defendant company first begin to put the Washingten Beater on the home market?

A. May, 1876.

5. When did they first begin to put the Family on the market?

A. October, 1876.

6. What egg beaters with cutting edges did you find in the market when you began as traveling salesman, selling the Washington and Family Egg-Beaters, in 1876?

A. I found the Peerless, the Novelty, the Centripetal, the Star and Dover; I am not certain the Star at first then or not; in 1877 I found the Star, I am positive.

7. These that you have mentioned were those that you found in the market while you were traveling salesman, are they not?

A. Yes, sir.

8. Since you ceased to be traveling salesman, and have had charge of the New York store, what beaters, if any, with cutting edges, have come upon the market, up to the fall of 1879?

A. I have come across the Vortex and Propeller, and The Best of All, and the Twin; then I have come across this single beater of Mr. Jenks, I don't remember the exact year of it.

9. Covering the entire period from the spring of 1876, when you first began to sell the Washington as traveling salesman, including the experience which you had, after you ceased to be salesman and had charge of the New York store, to what extent, basing your answer upon your experience, has the Family and Washington Egg-Beater been a competitor on the market, with the Dover Beater?

A. I have not considered it as a competitor with the Dover; it has been sold as a cheaper article, and in competition with these other cheaper beaters.

10. From your experience in the egg-beater trade, and the knowledge thus acquired, in what does the popularity and value of the Dover Egg-Beater consist; I mean in what features of the beater?

190 A. In its interlacing motion.

11. What has been, according to your observation, the course of trade in egg-beaters, since the Family and the Washington have been out of the market? Does the Dover take their places?

A. I never heard of an instance of the Dover taking the place of ours since ours was taken out of the market; I have known several instances where other cheap beaters have taken the place of our.

Cross-examined by Mr. CLARK:

X 12. Did you ever know of any sales of the best of all beaters, so called, and if so, to what amount?

A. I have seen the best of all in a number of stores, and know of one of the largest concerns in New York who sell them. I have no way of knowing how many they sell; but I have heard them speak highly of it.

X 13. When you enumerate the Peerless, Novelty, Centripetal, Star, Dover, Vortex, Propeller and Best of All, as beaters on the market, do you mean anything more than that you saw some of each kind in the stores you visited to solicit trade?

A. I mean simply that I saw them in the different stores, and came in competition with some of them.

X 14. What do you mean in your last answer, by "came in competition?" Had their prices cited to you?

A. In some instances I have had the prices quoted.

X 15. What else makes coming in competition?

A. Comparing the relative merits of the several beaters, their ability to do the work, and their prices.

Adjourned to June 19, 1880, 10 a. m.

NEW HAVEN, *June* 19, 1880.

Parties present as before.

Evidence of Mr. Turner, continued.

X 16. Which of the egg-beaters you have enumerated, those of which you had qualities and prices cited to you, on your travels, did you encounter in the hands of traveling salesmen?

191 I don't remember of actually meeting the traveling salesmen for any of these concerns; that is, meeting them personally.

X 17. Which do you remember as having its prices and qualities cited to you?

A. All, or nearly all of them.

X 18. Please give the names of those whose qualities and prices were cited to you?

A. I have had the prices of the Propeller, and Scott's, the Peerless, the Vortex; of course there are a good many other cheap beaters at different times.

X 19. Are these all?

A. I presume there are others that I do not remember of at present; I might include the Star.

X 20. You don't remember, then, about the Dover or Centripetal in this respect?

A. Oh, yes, I remember them; I did not intend to have forgotten Dover, and there is that cheap one also of Mr. Jenks—I think he calls it Jenks' Single Beater.

X 21. Could in your judgment either of the beaters you have named been sold at the same price as the Dover?

A. No, sir, I don't think they could, any of them.

X 22. Could they have been sold at a price within ten per cent. of the Dover price?

A. I do not know that any of them could; some of them could not have been sold for anything like that.

X 23. The Family Beater was the best and most popular of the cheap beaters, wasn't it?

A. I do not know that it was.

X 24. Didn't you recommend it as the best next the Dover?

A. I don't know whether I have or not; I may have at sometimes.

X 25. Didn't you, in comparing its qualities and the way it did its work, with the qualities and the way they did their work, of the Novelty, Peerless, Star, Centripetal, Vortex, Propeller, and Best of All, argue to your customers that it was a better and more saleable beater for the money than either of them?

A. I did argue that it was better for the money than most of them.

192 X 26. You believed that, didn't you?

A. Yes, sir.

X 27. Which one did you except from the list when you argued it was better for the money than most of them? Was it Novelty, Peerless, Best of All, Star, Vortex, Propeller, or Centripetal?

A. I never thought our beater was equal to Best of All, the Star, or the Centripetal.

X 28. And never argued it was as good for the money as either of those, did you?

A. I never came much in competition with these goods. I may have claimed that for the difference in price; ours was just as good; our competition has been mostly with these cheaper beaters, and not with those.

X 29. Can you give the prices of Star, Centripetal, or Best of All, either from knowledge or information, and the year in which such prices prevailed, or were quoted to you?

A. I knew the price of those beaters were very much higher than ours. We never came much in competition with them, and I cannot give the prices of the different years. We based our prices more on these cheaper ones. I can remember that the price of, in 1877, was $24, and less than what we were selling ours at.

X 30. Who quoted it?

A. It was quoted by two or three parties in St. Louis.

X 31. Early or late in the year?

A. In July, 1877.

SETH H. PLUMB sworn:

1. Where do you reside, and what is your occupation?

A. New Haven, and I carry on the stove business, house furnishing business, etc.

2. Is the dealing in egg-beaters a part of your business, and for how long have you dealt in those articles?

A. It is. I have been in it more or less since 1872. I commenced about 1868.

3. And for the last four or five years have you been familiar with the different leading styles in the market?

A. I have.

193 4. Among these are the Dover, Family, and Washington included among those you have dealt in during that period?

A. Yes, sir.

5. Do the selling qualities of the Dover reside in its cutting edges, and if not, what are the qualities which make it saleable as a popular egg-beater?

A. Not altogether in the cutting edges, but in the interlacing motion and the ease with which it works.

6. Which feature principally aids its sale, its cutting edges or its interlacing motion?

A. Its interlacing motion.

7. Look at what are known as the Earle Beater represented by Exhibits Earle No. 1 and Earle No. 2, and comparing it with the Dover, say what their comparative value in the market as egg-beaters is or would be.

A. I think they don't amount to anything when selling side of the Dover.

Cross-examined by Mr. CLARK:

X 8. Would the Family or Washington Egg-Beaters sell side of the Dover?

A. No, sir, they would not; not at the same price.

X 9. They do sell, or they have sold, at a price about two-thirds that of the Dover, haven't they?

A. I have sold them at a trifle over half what I got for the Dover.

(On May 10th last, defendant's counsel sent to complainant's counsel a letter enclosing memorandum, which is placed in evidence, and marked Memorandum Request No. 1.)

(On May 13th defendant's counsel asked for a schedule, as per letter, which is put in evidence, and marked Memorandum Request No. 2.)

(Defendant's counsel received from complainant's counsel reply, dated May 17, 1880, which is put in evidence and reply to memoranda No. 2.)

(Complainant's counsel here states that in lieu of no beaters like these marked the Earle patent being made, a certain number were made and sold, to wit: 30 gross as well as 101 gross of Star.)

194 (Defendant's counsel gives notice that he cannot accept that statement as evidence in the cause.

(On this notice to produce memorandum, request No. 1, there was a schedule which was furnished in compliance to cross-interrogatory 42, to L. B. Foss, referred to in the memorandum, which schedule is placed in evidence as Foss Schedule A. This schedule is complained of in memorandum, request No. 1, and response to that complaint, Foss Schedule A is produced and placed in evidence.)

(Complainant puts as evidence memoranda of sales, which is marked "Foss Schedule of Sales.")

(With regard to the second item on said Foss Schedule of Sales, the defendant claimed that the names of customers, prices, and dates

of sales should be furnished; the complainant claimed that defendant was not entitled to such information.)

(The Master ruled that such information should be furnished.)

(Complainant placed in evidence a schedule containing the information called for, which is marked "Foss Supplemental Schedule of Sale.")

Adjourned to June 28, 10 a. m.

JUNE 28, 1880.

Parties present as heretofore.

Mr. Jenks recalled:

(Defendant's counsel puts in evidence letters patent issued to F. W. Seymour, as represented in the Washington Beater, February 22, 1876, and also letters patent issued to J. G. Brothwell, dated September 26, 1876, as embodied in the Family Beater, and also letters patent issued to Turner Williams, in 1870, as embodied in the Dover Beater.)

Mr. Henry F. Jenks recalled:

1. Have you already been examined as a witness in this cause?

A. I have.

195 2. Have you had some experience in the manufacture of egg-beaters?

A. I have.

3. Mr. Page, the witness, who was examined by the plaintiff, by comparing the cost of labor on the Dover Beater to the cost of labor on the Family Beater, estimates that the cost of labor on the Dover is fully 10 per cent. more than the cost of labor on the Family; will you please give your judgment, and as practical manufacturer of egg-beaters, as to the comparative cost of labor between the two beaters as they are represented by the two exhibits you have in your hands marked Family and Dover?

A. After examining Family and Dover, I should say that the Family cost at least 25 per cent. more, one-quarter more to manufacture than the Dover.

4. Do you refer now to the comparative cost of labor upon the beater, irrespective of the cost of material used in each?

A. I refer to the cost of labor only.

5. I now call your attention to the exhibit marked Family Beater, and ask for your judgment as to the cost of labor on the different items as I call them off.

6. Drilling wheel, per gross?

A. Sixty cents.

7. Drilling handle, per gross?

A. $1.00.

8. Drilling small gear, per gross?

A. Seventy cents.

9. Milling handle, per gross?

A. Fifteen cents.
10. Milling wheel, per gross?
A. Fifteen cents.
11. Straightening and cutting flat wire, per gross?
A. Twelve cents.
12. Straightening and cutting round wire, per gross?
A. Eight cents.
13. Milling round wire, per gross?
A. Fifteen cents.
14. Piercing outside floats, per gross?
A. Sixteen cents.
196 15. Piercing inside floats, per gross?
A. Sixteen cents.
16. Setting down floats, per gross?
A. Six cents.
17. Bending outside floats, per gross?
A. Forty cents.
18. Bending inside floats, per gross?
A. Ten cents.
19. Attaching outside floats to spindle, per gross?
A. Twenty cents.
20. Attaching inside floats to spindle, per gross?
A. Twenty cents.
21. Attaching outside floats to gear, per gross?
A. Fifteen cents.
22. Riveting wheel on handle, per gross?
A. Forty cents.
23. Riveting handle to wheel, per gross?
A. Thirty cents.
24. Milling handle rivet, per gross?
A. Twelve cents.
25. Assembling, attaching floats to handle, per gross?
A. $2.00.

Cross-examined by Mr. CLARK:

X 26. When you made egg-beaters, did you make them by day's work or by job work?
A. I made by day work; a very few made by the job.
X 27. Was the job work, when it was so done, let out by separate items or by the whole beater?
A. It was let out by the whole beater.
X 28. What did you pay for all the labor on the Centripetal by the gross?
A. To the best of my recollection, I paid $12 per gross.
X 29. How many egg-beaters, working with cog-wheels, did you make in all, to give you your experience?
A. About 105 gross, I should say.
X 30. Could you have cheapened your price for labor if the

production had been carried up to 300 gross a year with ready sale?

197 A. It could have been cheapened some, but not a large amount.

Mr. CORSON recalled:

1. Do the Turner & Seymour Manufacturing Company continue to put on the market and sell the Family Beater, embodying the features of the Brothwell patent?

A. They do.

1. Are the defendants the assignees of that patent?

A. They are.

2. In what form is the Family Beater now sold in the market?

A. In the form represented by this exhibit, which is marked New Family.

3. How does it compare with the old form, with cutting edges, as to giving satisfaction to your customers?

A. It gives equally good satisfaction as our old beater, as far as we know; we have never received any complaint.

(In answer to inquiry of defendant's counsel as to the selling price of Dover Egg Beater from the first of April, 1880, to the present date, complainant's counsel states that the selling price for one dozen lots has been $2.50 per dozen; price per gross, $24. On lots of ten gross or more a discount of ten per cent. is allowed on the gross price.)

Defendants rest.

Mr. JONES sworn:

1. What is your first name?

A. William.

2. Where do you reside?

A. In Newton, Mass.

3. Are you one of the traveling salesmen for the Dover Stamping Company?

A. I am.

4. How long have you been so employed?

A. A little over fifteen years.

5. In the course of your occupation, in the employ of the Dover Stamping Company, what parts of the country do you visit for the purposes of trade?

198 A part of Massachusetts, Rhode Island, Connecticut, New York State, Pennsylvania, and Canada.

6. Is it a part of your business, and, if so, for how long has it been a part of your business to solicit trade for the Dover Egg-beater?

A. It is; ever since the Dover Stamping Company commenced the sale of the egg-beater it has been my business to sell it; I should judge six or seven years.

7. Do you encounter, and have you encountered in your travels, egg-beaters employing cutting blades, or of the character of those now laid out on the table before you, and marked respectively Washington, Family, Peerless, Star, Novelty, Vortex, Propeller, Best of All, Centripetal, and J. S. & Co., and; if so, when did you encounter them respectively, as near as you can give?

A. The Washington, I should think, was some six years ago; it is a matter of not definite recollection; the Family, from three to four years ago; the Peerless, I should say, six years ago; the Star, I should think, four years ago; the Vortex, a year and a half; the Propeller, in this form, I should think, three years; the first Propeller did not have this brace, I think; the Best of All, perhaps, five years; the Twin, or J. S. & Co., I should think, five or six years ago; the Centripetal, perhaps, five years ago; but still I am not positive as to dates. I have never seen the Novelty in market.

8. Which of the beaters just shown you have you heard discussed by customers of the Dover Beater, as to their qualities and prices, in conversations you have had concerning sales of the Dover Beater?

A. They have all been discussed more or less, but the Family and Washington the most—I should say more than all the others.

9. Which of these beaters have you seen in stock in the hands of your customers?

A. The Family, Washington, Peerless, Star, Vortex, Propeller, J. S. & Co., Centripetal.

10. Are the Peerless and Star still on the market?

A. Not to my knowledge; I see none of them.

11. How long have they been out of the market?

199 A. The Peerless, I should say, four or five years; the Star, perhaps three.

12. Please state those beaters of the ones enumerated, which you found during the last three and one-half years, to be so actively in the market, and favorably received, as to interfere with your trade in beaters?

A. The Family and Washington, and to a very slight extent, the Best of All, J. S. & Co., Vortex, very recently, and very light; Propeller, to a slight extent.

13. How many of your customers carry stocks of Best of All, Vortex, J. S. & Co., and Propeller, respectively?

A. Of Best of All, I think only one has carried any stock of them, there may have been customers that have had a dozen, but not any stock; the same is true of Propeller, but they have not sold well, they have the same stocks on hand that they started with, pretty much, as far as I can find; the Centripetal had a local sale in Providence and that section more than anywhere else. I do not see it any where else. The J. S. & Co. is in the hands of the retail trade; from one to two dozen would comprise the stock. The Vortex, the same answer would apply to that; that has had a comparatively local sale in Providence and vicinity.

14. Have you considered that your trade was seriously effected by any of the egg-beaters before you, and if so, by what one?

A. I have; by the Family and Washington.

16. Any other?

A. Nothing serious; they have been short lived, most of them.

17. Do you consider the thin plain blades, used in the Family and Washington Beater, as of any advantage in selling that beater, in competition with the Dover at a less price than the Dover, and if so, what advantage?

A. I do consider it a great advantage, as thin plain edge in connection with a lower price and similar appearance to the Dover Beater, have given it its reputation and character in the market.

18. Have you encountered in your travels the new Family Beater with round wire floats, and if so, please state if that has been an active and efficient competitor with the Dover?

200 I have encountered it only as samples in the hands of dealers, one a piece, and have had no competition from it.

19. Were the dealers in whose hand you met this new Family, dealers who have formerly carried stocks of the Family with plain blades?

A. Yes, sir.

Cross-examined by Mr. BEACH:

X 20. You say that among other beaters you found actively in the market during the last three and one half years, and so favorably received as to interfere with the trade in the Dover, you found the Washington and Family; please name some of your customers as to whom such interference existed?

A. Charles Miller & Son, Utica, N. Y.; Beckwith, Utica, N. Y., I think Henry, I am not positive; Kennedy & Spaulding, Syracuse, and Dunning & Co., of Auburn, N. Y.; Hamilton & Matthews, of Rochester, and I think John H. Hill, of Rochester; then there is James Laney, Rochester; these are all that I recall now; those are the jobbers that I found.

THOMAS FERNALD, sworn:

1. Where do you reside?

A. Nottingham, N. H.

2. Are you a salesman for complainants?

A. I am.

3. Whereabouts?

A. I stay at the store most of time, and travel but short distances, to such places as Lynn, Salem, Lowell, Lawrence, Nashua, Manchester, Haverhill, Exeter, Suncook and Pittsfield, N. H., and other places near Boston, occasionally.

4. How long have you been such salesman for the complainant?

A. Since January, 1865.

5. In handling egg-beaters and selling them, have you encountered, as competitors, either and which of the egg-beaters before you on the table; and if so, when and where?

201 A. The Washington, the Star, the Peerless, the Family, the Vortex, the Propeller. I have seen the Novelty in a store, but don't think I ever did as stock. I don't know as I can define the time exactly, I think I saw the Washington some four or five years ago; I should think that the Peerless was about as old. I should think it was four years or more ago since I first saw the Star, and I have seen it within the last year or two, occasionally; the Family, I should think I had seen it more or less the last four years, perhaps longer; the Vortex I have never seen in stock but once to my knowledge, that was within a short time, and the Propeller I have seen only once or twice in stock, and that was within a short time. These others I don't think I have ever seen as stock; I have seen them as samples, all of them.

6. Who made or sold these Star, which you saw within one or two years?

A. Munroe made it; I believe we sold it, the Dover Stamping Company.

7. Except those Star Beaters sold by the Dover Stamping Company, have you seen any Star Beaters for three or four years?

A. No, sir.

8. How extensively did you find the Washington and Family Beaters carried in stock, in your travels, as compared with the other beaters before you?

A. The Propeller and Vortex, I have only seen once or twice in all. There were considerable more of the Family and Washington than of the others.

9. Has the Peerless been on the market of late years?

A. To a very little extent in my territory.

10. Which of the egg-beaters before you, has in your judgment affected and continued to affect the trade of the Dover Egg-Beater, during the three years ending a year ago?

A. I should say the Family the most.

11. Please say, if in competition with the Dover Egg-Beater at a lower price, the thin plain blades of the Washington and Family Beaters, would present any, and what advantages over round wire blades?

A. It resembled the Dover so much, that I think it was often bought for the Dover.

202 12. Have you seen any of the new Family Beaters in stock, or experienced any competition from them?

A. I never saw one till now; this one.

Cross-examined by Mr. BEACH:

X 13. Do you know of any person or persons, or corporation, who ever bought the Washington, or the Family Beater with its thin plain blades, mistaking them for the Dover Beater?

A. No; I don't know as I can answer that.

X 14. Can you name any customer of the Dover Company, with whose trade with the Dover Company, in egg-beaters, the thin plain blades of the Washington and Family Beaters have interfered?

A. I think I can.

X 15. Please name them, and all of them.

A. Martin & Strong of Lowell, W. J. Larrabee, of Lynn, ——— Lamb, from New Bedford; I could not recall his first name; I think W. G. Lamb, are the initials.

X 16. Any others?

A. I cannot name any others, as positively knowing.

Re-direct:

R.-D. 17. Did you ever encounter a customer who had dealt in the Dover Egg-beater, who mistook in your hands, the Family or Washington Beater, for the Dover; and if so, please state the circumstances?

A. I cannot answer that positive that I have.

R.-D. 18. Did you ever have complaints made to you of the prices at which Dover Egg-Beaters were selling by competitors of your customers, and then exhibit to the person complaining, the Family or Washington Egg-Beater, and have that recognized as the egg-beater sold by the competitor; and if so, please state the circumstances, and whether it was a common thing or not?

A. I have had people find fault, that other people sell the Dover Beater lower than they could buy it of us; and I would take the Family or the Peerless in hand, and ask them if they were sure it was the same beater, and they would say yes; I have
203 asked them why they did not buy the same beater, they would be surprised that I asked the question, and would ask me if that wasn't the same beater or not; this was very common.

R. D. 19. You say you had people who in mistaking the Family Beater for the Dover Beater, found fault with the price of the Dover, and when you asked them why they did not buy the Family Beater, they would be surprised that I asked the question, and would ask me if that was not the Dover Beater; did you tell them that it was, or was not?

A. Your question is founded on my last answer, of which a part was left out.

R.-D. 20. Won't you please specify what part of your answer to the last question is left out?

A. I used the word Family or Peerless in my last answer, or intended to.

R.-D. 21. I will repeat my question, inserting the word Peerless, which you say you left out.

A. I told them it was not.

R.-D. 22. Did you explain to these fault-finders the difference between these beaters, and show them why it was that the Dover

ought to command in the market a higher price than the Family or the Peerless?

A. I did.

R.-D. 23. You have spoken of Star Beaters as having been sold by the Dover Company; during what year were they sold?

A. I should think, 1877, 1878, and some of 1879.

R.-D. 24. What means of knowledge have you as to these sales by the Company of the Star Beater?

A. After the settlement with Mr. Munroe we had some of them on hand, and sold them.

R.-D. 25. At what price per gross were they sold?

A. I remember of seeing one gross sold at $24, or seeing it on the books after it was sold; I did not sell it.

R.-D. 26. What was the price of the Dover when the Star sold at $24.00?

A. I can't tell whether it was $36 or $42; they were sold to compete.

204 Mr. MOULTON sworn:

1. What is your name?

A. Joseph Moulton.

2. Where do you reside?

A. Winchester, Mass.

3. Are you a salesman of the Dover Stamping Company?

A. I am.

4. What route do you travel?

A. Ohio, Indiana, Michigan, Louisville, Wheeling, West Virginia, Pittsburg, and Erie, Pennsylvania.

5. How long have you been in the employ of the Dover Stamping Company?

A. A little over fifteen years.

6. Please look at the exhibits on the table and state which of them you have encountered on your travels, and which you have had customers compare, as to quality and price, with Dover Beater.

A. I have encountered the Family, Peerless, Star, Centripetal, Twin, and Propeller. I can't say that I have heard all these compared in quality and price with the Dover Egg Beater.

7. Have any of them been so compared by your customers, in making trades and soliciting orders; and, if so, which?

A. I have had the Star and Family shown to me as egg-beaters which they thought would sell as well at the price they were being offered for.

8. When was the Star shown to you?

A. I think in 1874 and 1875; perhaps later.

9. When was the Family so shown?

A. I think since 1877.

10. In your opinion, do the thin plain blades of the Family give it any value in competition with the Dover, at a less price, as a saleable article?

A. I think it does.

11. Please give your reasons for so thinking.

A. I think it is the impression of the trade that the flat floats, with sharp edges, was one of the principal points in the Dover Egg-Beater.

12. Have you seen the New Family Egg-Beaters in the hands of the trade—the one with round wire floats?

205 A. I have not seen it, that I remember of, in stock, but it has been shown to me as a sample.

13. Did you ever consider any egg-beater, except the Washington or Family, a serious competitor to the Dover from 1876 till July, 1879?

A. I cannot call to mind any other egg-beater, except the Star, which we sold ourselves since that time.

14. Did you ever have the purchase of Family Beaters quoted to you as a reason of not buying Dover?

A. I have.

15. Frequently or otherwise?

A. I can't say that it has been frequently, because that some parties who buy the Family would still buy some of ours.

16. Did you ever run across the Twin, or Scheider Beater, and tell us how that affected your trade, and how much you saw of it?

A. I don't remember that that affected the trade very much; it was in competition with our egg beater but a very short time, that I remember.

Cross-examined by Mr. BEACH:

X 17. You say that you have had the Family compared by your customers with the Dover Beater, as to the quality and price, and at times, though not frequently, you have had the price of Family Beaters quoted to you as the reason for not buying the Dover at the price asked. Can you name any of the customers of the Dover Company with whom you have dealt who made these comparisons and quotations between July, 1876, and July 1, 1879?

A. It is hard to designate just the ones that have made them; as near as I can remember, or I mean to say that some of these parties prefer the Dover Egg-Beater, if not for the difference in price.

X 18. Can you designate any one or more of the customers of the Dover Company with whom you dealt who made the comparisons and quotations of which you have spoken in your previous answers?

A. Noyes Brothers, of Cleaveland, O.; Coulson & Morehouse, Detroit, Mich.; Chase & Phinney, of Richmond, Ind.;

206 Townley Brothers, Terre Haute; that is all that I think, but there is other parties that bought egg-beaters on my territory.

X 19. What other manufactures of the Dover Stamping Stamping Company, beside egg-beaters, did you and the other traveling

salesmen of the company sell, or get orders for during the past three or four years?

A. Stamped and japanned ware, toilet ware, coal-hods, trays, cake boxes, tea cans, slop pails, dust pans, and numerous articles of japanned ware, tinners' trimmings, and stamped ware.

207 [EXHIBIT A. E. E. Marvin, Exm'r.]

THE TURNER & SEYMOUR MF'G. CO.

Cost of Washington Beater, after April 1st, 1877.

Wheels and handles,	46½	pounds,	2½		$1 16½	
Small gears,	7½	"	2½		19	
Iron rivets,	¼	"	20		05	
Iron washers,	¼	"	30		07½	
Iron rivets,	2¼	"	15		33¾	
Flatted tinned wire,	8¼	"	18		1 48½	
Round Tinned wire,	7	"	12		85	
Porcelain handles,					1 44	
Moulding wheel and handles					88¾	
Moulding gears					63¾	
Bronzing					99½	
Drilling wheel					60	
Drilling handle					90	
Drilling gears					1 20	
Milling handles					24	
Milling wheel					24	
Straightening and cutting flat wire					08	
Straightening and cutting round wire					06	
Milling round wire					24	
Piercing outside floats					12	
Piercing inside floats					12	
Setting down floats					06	
Bending outside floats					15	
Bending inside floats					12	
Attaching outside floats to gear					50	
Attaching inside floats to spindles					25	
Attaching outside floats to spindles					25	
Riveting wheel on handle					40	
Riveting handle					30	
208 Milling handle rivet					12	$14 00
Breakage and waste, 10 per cent					--	1 40
Attaching floats to handle					1 44	
Boxes					72	
Packing					24	
Case					35	2 75
General expenses, 25 per cent					--	4 53¾
						$22 68¾

Cost of Washington Beater to April 1st, 1877.

Wheels and handle,	46½	pounds,	2½		$1	16½
Small gears,	7½	"	2½			19
Iron rivets,	¼	"	20			05
Iron washers,	¼	"	30			07½
Iron rivets,	2¼	"	15			33¾
Flat-tinned wire,	8¼	"	33		2	72¼
Round-tinned wire,	7	"	12			84
Porcelain handles					1	44
Moulding wheel and handle						83¾
Moulding gears						63¾
Bronzing						99¼
Drilling wheel						60
Drilling handle						90
Drilling gears					1	20
Milling handle						24
Milling wheel						24
Straightening and cutting flat wire						08
Straightening and cutting round wire						06
Milling round wire						24
Piercing outside floats						12
Piercing inside floats						12
Setting down floats						06
Bending outside floats						15
Bending inside floats						12
Attaching outside float to gear						50
Attaching inside float to spindle						25
Attaching outside float to spindle						25
Riveting wheel on handle						40
209 Riveting handle						30
Milling handle rivet						12
						$15 23½
Breakage and waste, 10 per cent.					--	1 52
Attaching floats to handle					1	44
Boxes						72
Packing						24
Case						35
						2 75
General expenses, 25 per cent.					--	4 87½
						$24 38¼

Cost of Large Washington Beater.

Wheels and handles,	92¼	pounds,	2½	$2	30½
Small gears,	12½	"	2½		31¼
Iron rivets,	¼	"	20		05
Iron washers,	¼	"	30		07½
Iron rivets,	2¼	"	15		33¾
Flat tinned wire,	22½	"	33	7	42½
Round tinned wire,	16	"	12	1	92
Wood handles					50

Moulding wheels and handles			$1 66	
Moulding small gears			1 06½	
Bronzing			1 87½	
Drilling wheel			60	
Drilling handle			90	
Drilling gears			1 20	
Milling handle			24	
Milling wheel			24	
Straightening and cutting flat wire			08	
Straightening and cutting round wire			06	
Milling round iron			24	
Piercing outside floats			12	
Piercing inside floats			12	
Setting down floats			06	
Bending outside floats			15	
Bending inside floats			12	
Attaching outside floats to gear			50	
Attaching inside floats to spindle			25	
	Attaching outside floats to spindle		25	
210	Riveting wheel on handle		40	
	Riveting on handle		30	
Milling handle rivet			12	$23 47
Breakage and waste				2 34
Attaching floats to handle			1 44	
Boxes			1 08	
Packing			24	
Case			65	3 41
General expenses, 25 per cent.			7 30½	
				$36 52½

Cost of Family Beater, after April 1st, 1877.

Wheels and handles,	46½	pounds,	2½	$1	16½
Small gears,	5¾	"	2½		14½
Iron washers,	¼	"	30		07½
Iron rivets,	2¼	"	15		33¾
Flat tinned wire,	8¼	"	18	1	48½
Round tinned wire,	7	"	12		84
Porcelain handles				1	44
Moulding wheels and handles					83¾
Moulding small gears					49
Bronzing					95½
Drilling wheel					60
Drilling handle					90
Drilling gears					60
Milling handle					24
Milling wheel					24
Straightening and cutting flat wire					08
Straightening and cutting round wire					06

Milling round wire	$0 24		
Piercing outside floats	12		
Piercing inside floats	12		
Setting down floats	06		
Bending outside floats	15		
Bending inside floats	12		
Attaching inside float to spindle	25		
Attaching outside float to spindle	25		
Attaching outside float to gear	25		
211 Riveting wheel on handle	40		
Riveting handle	30		
Milling handle rivet	12	$12	87
Breaking and waste, 10 per cent.		1	28¾
Attaching floats to handle	1 44		
Boxes	72		
Packing	24		
Labels	02½		
Case	35	2	77½
General expenses, 25 per cent.		4	23
		$21	16¼

Cost of Family Beater, after April 1st, 1877.

Wood Handles.

Wheels and handles,	46½	pounds,	2½	$1	16½
Small gears,	5¾	"	2½		14½
Iron washers,	¼	"	30		07½
Iron rivets,	2¼	"	15		33¾
Flat tinned wire,	8¼	"	18	1	48½
Round tinned wire,	7	"	12		84
Wood handles					40
Moulding wheel handle					83¾
Moulding gears					49
Bronzing					95½
Drilling wheel					60
Drilling handle					90
Drilling gears					60
Milling handle					24
Milling wheel					24
Straightening and cutting flat wire					08
Straightening and cutting round wire					06
Milling round wire					24
Piercing outside floats					12
Piercing inside floats					12
Setting down floats					06
Bending outside floats					15
Bending inside floats					12
Attaching inside floats to spindle					25

212	Attaching outside floats to spindles	$0 25	
	Attaching outside floats to gear	25	
Riveting wheel on handle		40	
Riveting handle		30	
Milling handle rivet		12	$11 83
Breakage and waste, 10 per cent.			1 18
Attaching floats to handle		1 44	
Boxes		72	
Packing		24	
Labels		02½	
Case		35	2 77½
General expenses, 25 per cent.			3 94½
			$19 73

Cost of Family Beater to April 1st, 1877.

Wheels and handles,	46½	pounds,	2½	$1	16½
Small gears,	5¾	"	2½		14½
Iron washers,	¼	"	30		07½
Iron rivets,	2¼	"	15		33¾
Flat tinned wire	8¼	"	33	2	72¼
Round tinned ware	7	"	12		84
Porcelain handles				1	44
Moulding wheels and handles					83¾
Moulding small gears					49
Bronzing					95½
Drilling wheel					60
Drilling handle					90
Drilling gears					60
Milling handle					24
Milling wheel					24
Straightening and cutting flat wire					08
Straightening and cutting round wire					06
Milling round wire					24
Piercing outside floats					12
Piercing inside floats					12
Setting down floats					06
Bending outside floats					15
Bending inside floats					12
213 Attaching inside float to spindle					25
Attaching outside float to spindle					25
Attaching outside float to gear					25
Riveting wheel on handle					40
Riveting handle					30
Miling handle rivets					12 $14 10¾
Breakage and waste, 10 per cent.					1 41
Attaching floats to handle				1	44
Boxes					72
Packing					24

Labels	$0 02½	
Case	35	$2 77½
General expenses, 25 per cent.		4 57¼
		$22 86½

Recapitulation of Washington and Family Beaters.

Manufactured and sold by the Turner & Seymour M'f'g Co.

Total quantity sold, 1,494¼ gross.	
Total amount charged	$35,850 10
Less actual cash losses	576 77
Total amount actually received	$35,273 33

Cost of Manufacture.

350 gross Washingtons, to April 1, 1877, at $24.38¼	$8,533 87
320 2-12 gross Washingtons, after April 1, 1873, at $22.68¾	7,263 78
19 7-12 gross large Washingtons, at $36.52½	715 28
85 gross Family, to April 1, 1877, at $22.86½	1,943 53
19½ gross Family, after April 1, 1877, porcelain, at $21.16½	412 72
700 gross Family, after April 1, 1877, wood, at $19.73	13,811 00
	$32,680 18
Royalty on 629 gross Washingtons, at $2.00	1,384 00
Worthless tools and machinery	650 00
Total cost	$34,714 18
Total profits	559 15

214 [EXHIBIT B.]

List of Worthless Egg Beater Tools.

1 Bed piece, 1 Cutting die, 1 Punch,	for cutting flat wire	$20 00
1 Bed piece, 6 Cutting dies, 6 Punches,	for piercing wire	55 00
1 Bed piece, 3 Dies, 3 Formers,	for forming inside floats	40 00
1 Set dies and header		10 00
1 Set jiggs and clamps		25 00
1 Rotary machine		40 00
7 Sets formers		70 00

2 Bending machines	$40 00
1 Riveting bench and clamps	20 00
1 Press	60 00
Small Washington patterns	130 00
Large Washington patterns	140 00
Total	$650 00

List of Names of Turner & Seymour's Egg-Beater Customers Who Are or Have Been Ours.

DOVER STAMPING CO.'S CUSTOMERS.

	Gross.	Dozen.
Agard & Church, Wolcottville, Conn.		
ı/ Adams & Westlake Mfg. Co., Chicago	6	
Amidon & Co., Baltimore.		
ı/ Andrew Treadway & Son, Dubuque	1	
ı/ Anthony, Cowell & Co., Providence.		
ı/ +Archer & Co., New York.		
215 ı/ Aston & Huff, and predecessors, Columbus, ⅙ doz. mam.		8
ı/ Arkell, Tufts & Co., New York	5	
Belcher Brothers, Providence.		
ı/ Booth, George & Co., Philadelphia	7	
ı/ Buhl, Ducharme & Co., Detroit	8	
ı/ Beckwith, H., Utica	1½	
ı/ Burnham, A. B., Louisville	1½	
ı/ +Burger & Baumgard, New York.		
ı/ Bronson, W. S., Hartford		2
ı/ Bailey, J. S., Middletown, Conn., 1–12 doz. mam.,		1
ı/ Byrne & Fitzsimmons, Albany	4	
ı/ Brintnall, Lamb & Co., and predecessors, Chicago	4	
ı/ Bogman & Vinal, Boston.		
ı/ Bingham, William, & Co., Cleveland	1	
ı/ Burgess, J., & Son, Zanesville, Ohio	1	
ı/ Benham & Stoutenborough, New York, ¼ doz. mam.	21	
ı/ Barstow, J. P., Norwich.		
ı/ Barnes, W. H., Boston.		
ı/ +Bassford, E. D., New York.		
ı/ Burrows, E. A., Troy	1½	
ı/ Baldwin, J. H., New York, ⅓ doz. mam	17	
ı/ +Bennett, S. O., New York.		
ı/ Cragin Brothers & Chandler, Chicago	10	
ı/ Cragin, H. B., & Co., Chicago	5	
ı/ ×Coombs, Crosby & Eddy, New York.		
Cranthene & Caverhill, Montreal.		
ı/ ×Crossman & Bro., William H., New York.		
ı/ Cottrell, Thomas G., & Co., Indianapolis	9	
ı/ Cleveland Stove Co., Cleveland	5	

	Gross.	Dozen.
✓Coulson & Morhouse and predecessors, Detroit, Michigan		9¼
✓Chicago Stamping Co., and predecessors, Chicago	23	
✓Cheever, Burchard & Co., St. Louis	1	
✓Cincinnati Tin and Japan Co., Cincinnati		6
Crancer, J. W., Leavenworth.		
✓×Coulter, Flogler & Co., New York.		
Corbitt & Failing, Portland, Oregon.		
216 ✓+Clark, Sawyer & Co., Worcester.		
✓Culter, Sandmeyer & Co., Peoria	3	
✓Churchill (Willis or Chas.), New York, previous to July, 1876	97	
✓Dunlap, John, Pittsburgh	2	
Darling, H. M., Boston,		
✓Ducharme, Fletcher & Co.	10	
✓Dickinson & Mayo, Springfield, Mass.		
Darling, William & Co., Montreal.		
✓×Davidson, Thomas, Montreal.		
✓Demmler Brothers, and predecessors, Pittsburgh ¼ doz. mam.		8
Dessunt, L. C., Davenport.		
✓×Drake & Dayton, Columbus.		
✓×Dunning & Co., Auburn.		
Dubois, George, Utica.		
✓×Everson & Fruisselle, Syracuse.		
✓Fleming, Agnew & Co., Pittsburgh	6	
✓Field, A. & Co., New York	81	
✓×Forbes, R. W., New York.		
Fish, C W., Chicago.		
✓×Felix, Marston & Blair, Chicago.		
✓Frankfurth, William, Milwaukee		3
Freer, W. H., Troy.		
✓Foster, Stevens & Co, Grand Rapids	3½	
Fox, Charles E., Dayton.		
✓×Foster, P. H., Brooklyn.		
✓Fox, W. B., & Brother, New York	1	
✓Gifford & Beach, New York.		
✓Griswold & Richmond, and predecessors, West Meriden, Conn.,		6
Gerber, C., Toledo, Ohio.		
✓Gender, George, & Co., Milwaukee.		
Gould, L., & Co., Chicago.		
✓Gates & Co., Saratoga		1½
Gray, R., Jr., Newark.		
✓Hibbard, Spencer & Co., Chicago	16	
Hildebrand & Fugate, Indianapolis.		
✓Horton, B., & Co., St. Louis	4	
217 Hubley, George W., Alleghany City.		

	Gross.	Dozen.
✓Haberman, F., New York	20	
✓Hall & Carpenter, Philadelphia	1	
✓Hamilton & Mathews, Rochester	9	
✓Hoy & Co., Albany	5	
✓Hubbard & Wood, Flint, Mich.		3
✓Harris, J. D., Boston.		
✓+Hahue & Co., Brooklyn		
✓Heyniger, L., New York	9	
✓Holbrook, Merrill & Co., San Ffancisco	3	
✓James, Aikman & Co., New York	28	
✓+Jewett, John C., & Son, Buffalo.		
✓Johonnat & Sanders, Boston.		
✓Janney, Moler, Brooks & Co., Minneapolis	1	
✓Keuffel & Esser, New York	7	
✓Kennedy, Spaulding & Co., Syracuse	7	
✓Ketcham E., Co., New York	32	
Kissam, J. H., New York.		
Law & Garlick, New York.		
✓Layman, Carey & Co., Indianapolis	2	
✓Lawson, F. H., & Co , Cincinnati	8	
✓Landerbach, Gilbert & Co., New York, 6 doz. mam.	7	
✓Laney, James, Rochester, N.Y	2	
Limback, M., Detroit.		
✓+Lehman, E. J., & Co., Chicago.		
✓Miller Brothers & Keep, Chicago	4	
✓Markt & Co., New York, 3 doz. mam.	74	
✓McIntosh, Good & Co., Cleveland,	1½	
✓+McCombs, Carruth & Byrne, St. Louis.		
McCall, W. A., Newark.		
Maltby, Curtis & Co., New York.		
✓Meyer & Geiger, New York	82	
✓+Moore, D., & Co., Hamilton, Ont.		
✓Millar, Charles, & Son, Utica	3	
✓Malthai, Ingram & Co., Baltimore.		
Markley, Alling & Co., Chicago	9	
✓+Marbourg, W. W., Atchison, Kas.		
✓+McDonald & Booth, Toronto, Ont.		
218 Morandi, Francis, Boston.		
Mayer, Charles, & Co., Indianapolis.		
✓Moore, W. S., Keokuk.		
✓Maclay, J., & Co., Dubuque.		
✓×Miller, A. R., Minneapolis.		
✓Noyes & Brother, Cleveland	4	
Negus, W. A. & S. G., New York.		
✓Pritzlaff, John, Milwaukee.		
✓Porter, C. B., & Co., Philadelphia	14	
✓Phelps, Sherman D., & Co., Binghampton	3	

	Gross.	Dozen.
✓Pratt & Co., Buffalo and Elmira	12	
Porter, Robert, & Son, Philadelphia.		
✓Peabody, H. W., & Co., Boston	6	2½
✓×Prescott Brothers & Co., Fort Wayne.		
✓Partridge, Horace, & Co., Boston.		
✓Phelps, F. F., Worcester.		
✓×Piper, Noah L., & Sons, Toronto.		
✓Quackenbush, Townsend & Co., New York	2	
Quackenbush, J. E., & Co., New York.		
✓Russell & Erwin Manufacturing Co., New York and Philadelphia	61	
✓×Rathbone, Sard & Co., Detroit.		
✓×Ridley, E., & Son, New York.		
✓×Richardson, H. S., Terre Haute.		
Roosevelt, S., New York.		
✓Rice & Burnett, Cleveland		3
Rankin, J. H., Pittsburgh.		
Rogers, Taylor & Co., Lowell.		
✓×Rice, Borne & Co., New York.		
✓Stewart & Conklin, Dayton	1	
✓Sellew & Co., Cincinnati, 1-12 doz. mam.	14	
✓Shepard, Sidney, & Co., Buffalo	10	
✓Simmons Hardware Co., St. Louis	6	
✓Scheider, Joseph, & Co., New York	3	
Stevenson & Cartwright, Alleghany City.		
✓Strong, Hackett & Co., and predecessors, St. Paul	2	
✓Schroer, J. H., and predecessors, Cincinnati	1	
✓Suberger & Breahey, Chicago	8	
✓Samuels, M. & L., Toronto.		
219 ✓Sellew, R., & Co., St. Louis	16	
Surdam, S. G., New York.		
✓Spencer & Noftsker, Rock Island, Ills.	1	
Sea, S. Guy, & Co., Chicago.		
Shapleigh, A. F., & Co., St. Louis.		
Stevenson & Brother, Alleghany City.		
✓Standart Brothers, Detroit	½	
Seyfordt & Walz, Ea. Saginaw, Mich.		
✓Shepard, C., & Co., Milwaukee	1	
✓Sargent & Co., New York, 1 doz. mam.	30	2
✓Sparow, W. H., Toronto	½	
✓Smith, Cohn & Co., New York	5	
✓Stanborough, Stratton & Co., Owego, N. Y.		1½
✓Sharp & Ring, Lacrosse, Wis.		3
Suydam, S. A., New York.		
Sullings, Kingman & Co., New Bedford.		
✓Stowell Brothers, Elmira	1	
✓Seavey & Co., Boston, 1-6 doz. mam.	20	
Tabor, R. H., New York.		

	Gross.	Dozen.
Townley Brothers, Terre Haute.		
Timberlake Brothers, Peoria.		
✓ Tice & Huntington, Cincinnati	1	
✓ × Totten, Charles, New York.		
✓ Taylor, H. J., New Bedford		3
Udell, Schmieding & Co., St. Louis	1	
✓ × U. S. Stamping Co., New York.		
✓ Viele, M. E., Albany	11	
✓ × Witte, F. A., St. Louis.		
Warner & Dodge, Jackson, Mich.		
✓ × Wiester & Co., San Francisco.		
✓ × Westphal, Hinds & Co., Dubuque.		
✓ × Wemott, Howard & Co., Dubuque.		
✓ Washburn & Davis, Abington, Mass.		
✓ Worthington, George, & Co., Cleveland.		
✓ Walbridge, C. E., Buffalo	2	6
✓ × Watkins, J. Y., & Sons, New York.		
Weibush & Hilger Ad. Co., New York.		
✓ Williams, Isaac S., Brooklyn	1	
Woodwell, J., & Co., Pittsburgh.		
✓ Wilson, Wise & Putnam, Springfield, Ohio		1
220 ✓ × Wells & Nelliger, Chicago.		
✓ × Wood, G. A., & Co., Jersey city.		
Washburn, F. R., Taunton.		
✓ This check is placed against the names of those who have bought Dover Egg Beaters of us	151	names.
× This check is against names not on our books, between July, 1873, and July, 1876	38	names.
Figures at right of page are grosses, or dozens, of Dover Beaters—bought of us by those names against which they stand—between July, 1873, and July, 1876	94	names.

Ninety-five Names Mutual Customers on Egg-Beaters.

AMOUNTS AND DATES OF SALES.

	July 1, 1876, to July 1, 1877. Gross. Doz.	July 1, '77, to July 1, '78. Gross. Doz.	July 1, 1878, to July 1, 1879. Gross. Doz.	July 1, '79, to *Dec. 31, '79. Gross. Doz.
Adam & Westake M'f'g Co.	3 ------	4 ------	1 ------	3
Andrew Treadway & Son	2 ------	1 ------	1	
Aston & Huff	4	3	1	2
Arkell, Tufts & Co.	9 1-2	13 7 1-4	8 ------	1
Booth, Geo., & Co.	2 ------	4 ------	12 2	
Buhl, Ducharm & Co.	--------	4 ------	5 ------	10
Beckwith, H.	--------	--------	1	
Burnham, A. B.	1 ------	1 ------	1 ------	1
Bronson, W. S.	--------	1	--------	7-12
Bailey, J. S.	--------	1		
Byrne & Fitsimmons	2 ------	2 ------	1	
Brintnall, Lamb & Co., and pred'rs.	3 ------	--------	--------	10
Bingham, William, & Co.	4 ------	4 ------	2	
Burgess, J., & Son	--------	2	4	
Benham & Stoutenborough	10 ------	5 ------	3 ------	1-12
Burrows, E. A.	1 ------	1		
Baldwin, J. H.	--------			
Cragin Bros. & Chandler	3 ------	2 ------	7 ------	14
Cragin, H. B., & Co.	--------			
Cottrell, Thomas G., & Co.	--------	3		
Cleveland Stove Co.	3 ------	3 ------	3 ------	10
Coulson & Morhouse	3	6	1	1 1
Chicago Stamping Co.	8 1-2	18 ------	15 ------	10
Cheever, Burchard & Co.	--------	2 ------	10	
Cincinnati Tin and Japan Co.	1 ------	2 ------	3 ------	1
Cutler, Sandmeyer & Co., and succ's.	2 ------	1 ------	1 ------	1
Churchill, Willis or Charles				
Dunlap, John	--------	1		
Ducharme, Fletcher & Co.	--------	5 ------	--------	10
Demmler Bros.	1 1-12	--------	2	1
Fleming, Agnew & Co.	3 ------	4 ------	2 ------	2
Field, A. & Co.	101 ------	15 ------	10	
Frankfurth, William	--------	--------	--------	1
Foster, Stevens & Co.	--------	1 ------	1	
Fox, W. B., & Bro.				
Griswold & Richmond				
Gates & Co.	--------	1		
Hibbard Spencer & Co.	20 1-12	18 ------	20 ------	10
Horton, B. & Co.	2 ------	2 ------	3 ------	2
Haberman, F.	6 ------	7 ------	4 ------	20
Hall & Carpenter	1 ------	1 ------		
Hamilton & Mathews	3 ------	4 ------	2 ------	10
Hoy & Co.	--------	4 ------		1
Hubbard & Wood	1	--------	1	
Heyniger, L.	--------	1		
Holbrook, Merrill & Co., and prede's,	3 ------	7 ------	10 ------	10
James Aikman & Co.	20 ------	20 ------	20 ------	10
Janney, Moles, Brooks & Co.	1 ------	--------	1	
Keuffel & Esser				
Kennedy, Spaulding & Co.	2 ------	2 ------	12	
Ketcharm, E., & Co.	74 ------	30 1-12	47 ------	25
Layman, Carey & Co.				
Lawson, F. H. & Co.	2 ------	4 ------	12	

Mutual Customers on Egg Beaters—Continued.

	July 1, 1876, to July 1, 1877 Gro.	Doz.	July 1, '77, to July 1, '78. Gro.	Doz.	July 1, 1878, to July 1, 1879. Gro.	Doz.	July 1 '79, to Dec. 31, 79, Gro.	Doz.
Lauderbach, Gilbert & Co.	2					1		
Laney, James	2		3		8		10	
Miller Bros. & Keep	1		1					
Markt & Co.	15	3			6			
McIntosh, Good & Co.			2		1	1-12	1	
Meyer & Geiger	50							
Millar, Charles, & Son	1							
Markly, Alling & Co.	1							
Noyes & Brother					1			
Porter, C. B., & Co.	4		7		7		10	
Phelps, Sherman D. & Co., suc'rs	2							
Pratt & Co.	1	5	1		1		1	
Peabody, H. W., & Co.			1		1		1	3
Quackenbush, Townsend & Co.	1							
Russell & Erwin Mfg. Co.	20	1-12	24	3	20	1-12	25	
Rice & Burnett	3				2			
Stewart & Conklin			1		1			
Sellew & Co.	1	1-6	2					
Shepard, Sidney & Co.	10		10		20		20	
Simmons Hardware Co.	3		10		2		10	
Scheider, Jos., & Co., and successors,	6		4				10	
Strong, Hackett & Co.			2		1		1	
Schroer, J. H., and predecessors	1		1					
Seaberger & Breakey	4		5		12		10	
Sellew, R., & Co.				1-12	10	6		
Spencer & Noftsken	1		1		1			
Standart Bros.	1		2				2	
Shepard, C., & Co.	3		3		1		2	
Sargent & Co.	1				24		10	
Sparrow, W. H.			6					
Smith, Cohn & Co.	2		2				1	
Stanborough, Stratton & Co., and sc's			1		1			1
Sharpf & Ring	3							
Stowell Bros.								
Seavey & Co.	16	5-12	28		14		2	
Tice & Huntington	1				1		1	
Taylor, H. J.			1		1			
Udell, Schmeeding & Co.	1		2		1		10	
Viel, M. E.	1						2	
Walbridge, C. E.	1		1		1		1	1-12
Wilson, Wise & Putnam, and suc'rs,	1		1					
Williams, Isaac L.					1			
	445	1 11-12	304	9 5-12	349	10 2-12	294	7 9-12

222 Foss Schedule A. E. Marvin, Master.

Dover Beaters sold to go abroad from January, 1875, to April, 1880.

July	28, 1877,	25	gross, at	$30 00	
June	22, 1877,	1	"	33 00	
July	14, 187,	50	"	27 00	
June	22, 1876,	1	"	42 00	
		1-6	gross Tumb., at	42 00	
		3	mammoth c	2 50	
June	28, 1876,	1-6	gross, at	42 00	
November	6, 1878,	1	"	42 00	10 p. ct.
September	3, 1878,	1	"	33 00	
January	21, 1875,	1	"	36 00	
		1	doz. Tumb., at	3 00	
January	27, 1875,	12	gross, at	36 00	
January	28, 1875,	12	"	36 00	
February	16, 1875,	2	"	36 00	
April	7, 1875,	1	"	36 00	
October	2, 1875,	10	"	36 00	
October	4, 1875,	10	"	36 00	
October	6, 1875,	5	"	36 00	
October	26, 1875,	25	"	30 00	
February	28, 1876,	25	"	30 00	
March	30, 1876,	5	"	30 00	
June	27, 1876,	5	"	30 00	
October	14, 1876,	25	"	30 00	
October	31, 1876,	25	"	30 00	
November	3, 1876,	2	"	30 00	
December	13,	2	"	30 00	
March	19, 1877,	35	"	30 00	
May	17, 1877,	10	"	30 00	
June	14, 1877,	5	"	30 00	
July	3, 1877,	2	"	30 00	
August	6, 1877,	2	"	30 00	
Septem'r	22, 1877,	25	"	30 00	
October	17, 1877,	1	"	30 00	
Novemb'r	28, 1877,	25	"	30 00	

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January	2, 1878,	1	"	30 00	
January	15, 1878,	1	"	30 00	
Febr'y	15, 1878,	25	"	30 00	
March	16, 1878,	75	"	24 00	
April	10, 1878,	1	"	24 00	
June	14, 1878,	100	"	24 00	
July	17, 1878,	2	"	24 00	
October	1, 1878,	100	"	24 00	
October	16, 1878,	2	"	24 00	
Decemb'r	27, 1878,	2	"	24 00	

March	6, 1879,	100 gross, at		$24 00
May	15, 1879,	2 "		24 00
August	6, 1879,	3 "		24 00
Novb'r	25, 1879,	50 "		18 00
Decemb'r	16, 1879,	50 "		18 00
March	7, 1880,	3 "		18 00
April	5, 1880,	50 "		18 00

Total------ 918 1–6 gross.
3 doz. Tumb.
1–4 Mammoth.

[Foss SCHEDULE A[1]. E. E. Marvin, Master.]

Biernatzki & Co., Hamburg.

1872.	March	14.	4 gross, at	$3.75	per dozen.	
	April	30.	12 "	3.75	"	gold.
	Sept.	14.	6 "	4.09	"	"
	Oct.	5.	8 "	4.09	"	"
	Nov.	1.	8 "	4.09	"	"
	Nov.	21.	8 "	4.09	"	"
1873.	April	8.	8 "	4.09	"	"
	June	30.	8 "	4.09	"	"
	Oct.	2.	8 "	4.09	"	"
	Dec.	9.	8 "	4.09	"	"
1874.	Feby.	12.	25 "	45.00		"

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Crowdon & Harod, London.

1872.	Oct.	18.	5 gross, at------	$60.00,	10 per cent.
1873.	Feb.	13.	5 " ------	60.00,	"
	Jan.	24.	5 " ------	60.00,	"
	Aug.	18.	5 " ------	60.00,	"

Stone & Chipman, Yokahama.

1873. May 23. 5 gross, at------ $60.00, 10 per cent.

G. B. Kent & Co.

1873.	Aug.	7.	60 dozen at------	$5.00, 10 per cent.
	Nov.	15.	60 " ------	5.00, "

John G. Rollins & Co.

1874. Dec. 10. 13. 23. } 14 gross at $36.00.

Beaver Stamping Company.

1873.	Sept.	15.	1 gross, at------	$60.00, 10 per cent.
	May		½ gross, at------	63.00.

Sold for the alleged purpose of export.

Gray & Danforth.

1872.	Feb.	8.	1	gross, at	$54 00	
	April	18.	1	"	60 00	
	July	30.	1	"	60 00	
	Oct.	3.	6	"	60 00	
	Nov.	26.	2	"	60 00	
1873.	Jan.	25.	1	"	60 00	
	March	29.	1	"	60 00	
	April	26.	12	"	60 00	
	May	5.	6	"	60 00	
	July	1.	1	"	60 00	
	Oct.	14.	1½	"	60 00	
	Dec.	4.	1	"	60 00	
		13.	6	"	60 00	
		29.	19	"	48 00	
1874.	Feb.	12.	1	"	60 00	
225						
1874.	Feb.	18.	25	"	$48 00	
	April	14.	2	"	60 00	
		16.	1	"	60 00	
	May	18.	1	"	60 00	
		25.	1	doz. Tumb., at	5 00	
	June	9.	1	gross, at	60 00	
	July	14.	3	"	60 00	
	Aug.	10.	22	"	48 00	
1875.	June	1.	2	"	36 00	
	July	1.	10	"	36 00	
		2.	1	"	36 00,	10 per cent.
		9.	2	doz. Tumb., at	4 00	
	Sept.	9.	2	"	4 00	
		9.	1½	doz. mam., at	30 00,	10 per cent.
1876.	March	20.	1	gross, at	42 00,	10 per cent.
1877.	June	20.	1	gross mam., at	30 00,	10 per cent.

Arkell, Tufts & Company.

1874.	July	19.	1	gross, at	$60 00	
	June	5.	1	"	60 00	
	July	30.	1	"	60 00	
	Aug.	25.	1	dozen, at	5 50	
	Dec.	22.	1	gross, at	60 00	
1876.	Jan.	10.	½	dozen mam., at	30 00	
	Mar.	25.	1	gross, at	42 00	
	Sept.	5.	1	"	42 00	
	Oct.	16.	1	"	42 00	
	Nov.	4.	1	"	34 00	
			½	dozen mam., at	30 00,	10 per cent.
	Dec.	20.	1	gross, at	42 00	

1877.	Jan.	11.	1 gross, at	$34	00
	Feb.	24.	1 "	34	00
	Mar.	20.	2 "	34	00
	May	16.	½ "	42	00
			1 "	42	00
	June	5.	1 "	42	00
	July	5.	1 "	42	00
			3 mam., at	2	50
			3 doz. mam., at	30	00
226.					
	Sept.	21.	1 gross, at	42	00
	Oct.	13.	1 "	42	00
	Oct.	13.	2 dozen, at	3	50
	Oct.	25.	1 gross, at	42	00
	Nov.	1.	1 "	42	00
1878.	Jan.	21.	1 "	42	00
	Jan.	29.	3 dozen, at	3	50
	March	6.	1 gross, at	42	00
	March	27.	1 "	42	00
	April	12.	1 "	42	00
	May	3.	1 "	42	00
	May	29.	1 "	42	00
	June	5.	1 "	42	00
	June	5.	1 "	42	00
	Oct.	5.	1 "	42	00
	Dec.	4.	1 "	42	00
	Dec.	26.	1 "	42	00
1879.	Feb.	20.	1 "	42	00
	Feb.	21.	1 "	42	00
	March	19.	1 "	36	00
	March	20.	1 "	36	00
	May	24.	1 "	36	00
	Dec.	19.	1 "	42	00

Markt & Company.

1873.	Oct.	30.	1 gross, at	$60	00	
1874.	Jan.	30.	1 "	60	00	
	April	22.	1 mam., at	3	00	
	April	24.	1 dozen mam., at	36	00	
	May	19.	2 gross, at	60	00	
	Sept.	16.	½ dozen mam., at	30	00	
	Oct.	3.	1 " "	30	00	
	Nov.	14.	½ " "	30	00	
	Dec.	21.	5 gross, at	60	00,	10 per cent.
1875.	Jan.	11.	1 "	60	00	
	Feb.	1.	4 "	48	00	
	May	7.	10 "	60	00	
	June	5.	2 "	60	00	
	June	16.	2 "	60	00	

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1875.	Sept.	7.	1 gross, at	$60	00
		27.	2 "	60	00
	Oct.	28.	20 "	48	00
1876.	Feb.	29.	10 "	42	00
	April	1.	½ dozen mam., at	30	00
		28.	10 gross, at	33	00
	Aug.	10.	10 "	33	00
		21.	¼ " Tumb., at	33	00
1877.	Feb.	7.	5 "	33	00
1879.	May	21.	6 "	36	00, 10 per cent.

A. Field & Company.

1875.	Jan.	18.	1 gross, at	$60	00
	Oct.	28.	1 "	60	00
	Nov.	8.	1 "	60	00
		12.	2 "	60	00
1876.	Feb.	5.	50 "	30	00
	April	28.	25 "	30	00
1877.		20.	25 "	30	00
	May	22.	1 "	42	00
		29.	25 "	30	00
	June	25.	50 "	30	00
1878.	May	15.	5 "	30	00
	June	15.	10 "	30	00
	July	15.	10 "	30	00

Meyer & Geiger.

1873.	June	21.	3 gross, at	$60	00
	Aug.	19.	1 dozen, at	6	00, 5 per cent.
	Oct.	7.	5 gross, at	60	00
	Nov.	11.	2 "	60	00
1874.	March	13.	25 "	48	00
1876.	Jan.	22.	50 "	30	00
1877.	June	7.	50 "	30	00

Willis Churchill.

1872.	Feb.	5.	3 gross, at	$54	00
		21.	2 "	54	00
		27.	1 "	54	00

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	March	16.	3 gross, at	54	00
	March	27.	6 "	54	00
	March	29.	12 "	54	00
	April	1.	1 dozen, at	4	50
	June	26.	1 gross, at	60	00
	July	10.	3 "	60	00
	Aug.	21.	3 "	60	00

1872.	Aug.	29.	3 gross, at		$60 00
	Sept.	18.	3 "		60 00
	Sept.	25.	3 "		60 00
	Oct.	1.	3 "		60 00
	Oct.	24.	3 "		60 00
	Nov.	9.	5 "		60 00
	Nov.	9.	1 dozen, at		5 00
	Nov.	18.	5 gross, at		60 00
	Dec.	10.	3 "		60 00
1873.	Jan.	6.	3 "		60 00
	Feb.	8.	3 "		60 00
	March	1.	3 "		60 00
	March	15.	3 "		60 00
	March	26.	3 "		60 00
	March	31.	3 "		60 00
	April	9.	3 "		60 00
	April	19.	1 dozen, at		5 00
	April	26.	3 gross, at		60 00
	May	20.	3 "		60 00
	June	4.	3 "		60 00
	June	18.	3 "		60 00
	June	24.	3 "		60 00
	July	2.	3 "		60 00
	July	7.	3 "		60 00
	Aug.	5.	3 "		60 00
	Aug.	12.	3 "		60 00
	Aug.	18.	5 "		60 00
	Aug.	25.	3 "		60 00

229 FOSS SCHEDULES SALES FROM JULY 1, TO MARCH 28, 1880.
E. E. Marvin, Master.

From July 1st to 28th. 25 gross, 10½ dozen; 2 1-6 dozen Ex. Family; ¾ dozen mam.
From July 28 to September 28. 625 gross.
From September 28 to November 28. 43 gross, 4 2-3 dozen; 8½ dozen Ex. Family; 7-12 dozen Tumb.; 1¼ dozen mam.
From November 28 to January 28, 1880. 17 gross, 1-6 dozen; 3½ dozen Ex.; ¼ dozen Tumb.; ½ dozen mam.
From January 28 to March 28, 1880. 94 gross, 11 7-12 dozen; 2 7-12 dozen Ex.; 1 1-2 dozen Tumb.; ¼ dozen mam.

FOSS SUPPLEMENTAL SCHEDULE OF SALES, E. E. Marvin, Master.

Beaters Sold Between July 27, and Sept. 28, 1879.

1879.

July 28.	Sidney Shepard & Co	10	gross,	$36, 10 per cent.
	Adams & Westlake Manufacturing Co	3	"	36
	W. M. Blair & Co	5	"	36, 5 per cent.

1879.

July 28.	Brintnall, Lemb & Co	10	gross,	$36,	10 per cent.
	Chicago Stamping Co	10	"	36,	10 per cent.
	Milton Rogers	5	"	36,	5 per cent.
	Wells & Nolliger	1	"	36	
	McIntosh, Good & Co	1	"	36	
	F. Haberman	10	"	36,	10 per cent.
	Cleveland Stove Co	1	"	36	
	Hibbard, Spencer & Co	10	"	36,	10 per cent.
	Perry & Euslin	2	"		
	A. W. Corbitt	½	doz.		
	E. Pike	1	"	4	
	W. S. Macomber	½	"	3	75
	Jas. Austin	½	"	3	75
	J. Carlish & Son	1	"	3	75
	S. May & Co., mam	1-12	"		
29.	Cheever, Burchard & Co	10	gross.	36,	10 per cent.

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July 29.	James Beakey	1	gross,	$36	
	Simmon's Hardware Co	10	"	36,	10 per cent.
	B. Horton & Co.	2	"	36	
	Udell, Schmieding & Co	10	"	36,	10 per cent.
	Sam'l Cupples & Co.	10	"	36,	10 per cent.
	Knapp & Weeks	1	doz.		
	C. A. Wales	½	"	3	75
30.	J. P. Hale	1	"		
31.	Coulson & Morehouse	1	gross,	36	
	Standart Brothers	2	"	36	
	Buhl, Ducharme & Co.	10	"	36	
Aug. 1.	O. B. French & Co.	½	doz.		
	J. D. & J. W. Eaton	4	"	3	75
2.	L. Lewis	1	"	3	50
	W. R. Perry & Co.	¼	"	9	00
	S. Dickson	⅓	"	3	75
3.	S. D. Gushee	½	"	3	75
4.	R. A. Culter & Co.	1	gross,	36	
	Cragin Bros. & Chandler	10	"	36,	10 per cent.
	George Gender & Son	1	"	36	
	Wm. Frankfurth	1	"	36	
	John Pritzlaff	2	"	36	
	C. Shepherd & Co.	1	"	36	
	S. N. Thorne	1	"	36	
	J. Oblinger	3	doz.,	3	50
	J. Oblinger	1 1-12	"	24	00
	D. A. Carr	1	"	3	75
	Gray & Danforth	3	gross.		
5.	Seavey & Co.	1	"		
6.	Buchler, Boubright & Co.	1	"		

1879.

Aug. 6.	F. S. Bradley & Co.	1	doz.		
	Simpson, Clark & Co.	2	"	$3	75
	D. M. Dickinson & Co.	1	gross,	36	
	Nilles & White	1	"	36	
	Troy Stamping Co.	5	"	36,	5 per cent.
	Charles Emmerson & Son	1	"	36	
	Wright Bros.	1	doz.,	3	75
	John Snyder	1	gross,	36	
	Van Heusen, Charles & Co.	1	"	36	
7.	Maurice E. Vich	2	"	36	
	Dickinson & Lee	½	doz.		
	Smith, Seltzer & Co.	10	gross.		
	G. R. Vance & Co.	1	"	36	
	Dunn & Cramton	1	"	36	

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8.	Eldridge & Perry	1	doz.		
	A. C. Martin	1-12	"		
	G. F. Mitchell	½	"		
	H. Brooks & Co	1	"		
9.	Tanner, Sullivan & Talbot	1	gross,	36	
	Cincinnati Tin and Japan Company	1	"	36	
	Tice & Huntington	1	"	36	
	George D. Winchell	1	"	36	
	Carney Bros	1	"	36	
	W. E. Henry	1	"	36	
	C. H., & C. L. Knowlton	1	doz.		
	H. H. Wilder & Co	4	"	3	75
	W. L. Jackson	⅓	"	3	75
	Holder & Herrick	1-12	"		
11.	Mayo & Clark	1	gross,	36	
	Janney, Brooks & Eastman	1	"	36	
	Strong, Hackett & Co	1	"	36	
	A. G. Crocker	¼	doz.	3	75
12.	Johnson & Sons	½	"		
	W. J. Larrabee	1	"	3	75
	L. Berenson	1	gross,	36	
13.	Haskell & Co	½	doz.	3	75
	Cox & Wardell	¼	"	3	75
	L. B. West & Co	1	gross,	36	
	C. E. Gale	½	doz.		
	Everson & Frisselle	1	gross,	36	
	J. B. Lowell	1½	doz.		
	A. N. Noyes & Son	1	"		
	T. N. Easton	1	gross.		
14.	B. Callender & Co	1	"		
	E. Ketchum & Co	25	"	36,	10 per ct.

1879.

Aug. 14.	Russell & Erwin Manufacturing Company	25	gross,	$36, 10 per ct.
	U. S. Stamping Co	10	"	36, 10 per ct.
	James Aikman & Co	10	"	36, 10 per ct.
	Lalance & Grosjean Manufacturing Co	10	"	36, 10 per ct.
	Dunning & Co	10	"	
	Bamber & Williams	1	"	36
	R. Crother	1	doz.	3 75
	George W. Fuller	1	gross,	36

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Aug. 15.	N. B. Sawyer	2	gross,	36
	Pollock, Weaver & Goss	5	"	36, 5 per cent.
	Hamilton & Mathews	10	"	36, 10 per cent.
	George A. Cobb	1	doz.,	3 75
	James Laney	2	gross,	36
	R. & E. Palmer	1	doz.,	3 25
	W. B. Stauffer	1	"	3 75
	Fleming, Agnew & Co.	1	gross,	36
16.	Seiberger & Breakey	10	"	36, 10 per cent.
	C. B. Porter & Co.	10	"	
	Smith, Seltzer & Co.	10	"	
	Buchler Boubright	1	"	
	Paine & Hansom	1	doz.	
	W. S. Bronson	1-12	"	
	Horace Partridge & Co.	10	gross	
	A. B. Stevens	½	doz.	
	J. P. Schaum	1	"	3 75
	Shertzer & Humphreyville	1	"	3 75
	L. A. May & Co	1	gross,	36
	S. Martin	⅙	"	9 00
	S. Martin	3	doz.,	3 75
	George D. Richards	⅓	"	3 75
	George Rant	3	"	3 00
18.	Demmier Bros.	1	gross,	36
	John B. Snyder	¼	"	9 00
	S. S. Hersey	1	"	
	Kapler & Slaymaker	1	"	36
19.	F. & H. Born	⅙	doz.,	3 00
	F. & H. Born	¼	"	9 00
	Rufus Dunham & Son	10	gross.	
	Macomber, Bigelow & Dowse	5	"	
	Houghton & Dutton	2	"	
	F. Haberman	20	"	
	L. K. Quimby & Co	1	"	
	J. Kimball	3	doz.,	3 75

1879.

Aug. 19.	F. D. Chaut	¼ doz.,	$3 75	
	F. A. Davis	¼ "	3 75	
	Baily & Baldwin	1 "	3 75	
20.	Sidney, Shepard & Co.	10 gross,	36, 10	per cent.
	Cleveland Stove Co.	10 "	36	
	T. Butler	1 "	36	
	Moore, Jenks & Co.	20 "	36, 10	per cent.
	W. Woltze	1 doz.,	9 00	
233				
	E. Allebrand	1 gross,	36	
	L. L. Kayton	1 doz.,	3 75	
	Jos. Huse & Son	1-6 "		
21.	Morley Bros	1 gross,	36	
	Sheldon & Fanning	1 "	36	
	L. S. Ayres	1 "	36	
	Charles D. Phillips	1 doz.,	3 75	
	H. C. Hill	1 "	3 75	
22.	Biddle Hardware Co	10 gross		
	Lloyd, Suppler & Walton	10 "		
	E. L. Parker & Co	10 "		
	Lyon, Conklin & Co	1 "		
	Parwater, Snyder & Rankin	1 "		
	Frank Grover	½ doz.		
	Holbrook, Merrill & Stetson	10 gross		
	Fuller, Dana & Fitz	10 "		
	Mitchell Bros. & Co	5 "		
	Farrar, Follett & Co	1 "		
	Frye, Phipps & Co	1 "		
	Clark, Adams & Clark	1 "		
	Carter & Haskell	1 "		
	Smith & Byram	1 "		
	F. A. Walker & Co	10 "		
	Samuel May & Co	5 "		
	A. French & Co.	1 "		
	Houghton & Dutton	25 "		
	Wood, Bishop & Co	1 "		
	W. E. Carey	½ doz.,	3 75	
	Parsons, Bangs & Co	½ "	30 00	
	J. D. & J. W. Eaton	1 gross,	36 00	
23.	Stevens & Duhklee, mam	¼ doz.		
	A. Sturges & Co	6 doz.,	3 50	
	Blymyer Bros	1 gross,	36 00	
	Spencer & Underhill	5 "	36 00,	5 per ct.
	Wiggan & Rose	½ doz.		
	J. F. & C. M. Shaut	¼ "	3 75	
25.	Botswick, Brown & Co	1 gross,	36 00	
	J. B. Borts	1 doz.,	3 50	

1879.

Aug. 25.	Whittaker, Haynes & Co	1 gross,	$36 00	
	D. Ketcham	2 doz.,	3 50	
	Rathbone, Lord & Co	1 gross,	36 00	
234				
	Ducharme, Fletcher & Co	10 gross,	$36	
	F. Wetmore	1 doz.,	4 00	
	Le Compte & Perkins Manufacturing Co	5 gross.		
	W. J. Wood	1 doz.		
	S. M. Veazie	1/6 "		
	J. Henderson	1 "		
	S. W. Warner & Son	1 "		
	P. S. Pretz	1/4 [gross,]	9 00	
	J. S. Osterstock	1 doz.,	3 75	
	H. M. Norton	1 gross,	36	
	T. T. Miller	1 doz.,	3 75	
	C. O. Meeker	1 "	3 75	
	Samuel Hood	1 "	3 75	
	S. Flory	1-12 "	9 00	
26.	Emphie & McDoil	1 gross,	36	
	Irwin & Ellis	1 "	36	
	Edw. Albro	1 "		
	Do	1/2 doz.		
	J. Henry Day	1 gross.		
	Barker, Downer, Rose & Company	1 "	36	
	Pratt & Co.	1 "	36	
	Gore & Clark	1 doz.,	3 75	
	Storrs & Chatfield	1 "	3 75	
	Floyd, Chamberlain & Co.	5 gross,	36,	5 per cent.
	S. J. Watson	1 doz.,	4 00	
27.	Russell Hall	1 gross.		
	J. H. Evans	1 doz.,	4 00	
28.	James Beakey	1 gross,	36	
	P. S. Pretz	1 doz.,	3 75	
	Shultz & Hosea	5 gross.		
	Blish, Mize & Silliman	1 "	36	
	J. T. Richards	1 "	36	
	Duncan, Wyeth & Co.	1 "	36	
	Bridge, Beach & Co.	2 "	36	
	C. H. Cowdy & Son	1 doz.,	3 75	
	Wellesley College	1-12 "	12 00	
	Pitkin Bros	1/2 "	4 00	
29.	A. C. Stone & Co.	1 "		
	E. H. Bagley	1 "		
	B. G. Carpenter & Co.	1 "	4 00	
	B. G. Carpenter & Co.	1/4 gross,	9 00	

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1879.

Aug.	30.	H. D. Newman	1	gross,	$42
		F. S. Katsenbach & Co.	2	doz.	
		W. H. White	1	"	
Sept.	1.	J. &. J. Allenson	1	"	4 00
		F. D. Chaut	¼	"	3 75
		John Carman	¼	"	4 00
	2.	Kaut & Krischbaum	1	"	4 00
		G. F. Peck & Bro.	1	"	4 00
		E. Jackson	1	gross,	42 00
		Green & Burnham	1	doz.,	4 00
	3.	Alling & Co.	1	"	
		Fuller, Dana & Fitz	4	"	
		Bull & Lamb	1	"	4 00
		D. Dewey	1	"	4 00
		Russell Hall	1	gross,	42
	4.	Flinn & Jackson	2	"	
		J. C. Johnson	2	"	
		Griffith Bros.	11¼	"	
		A. Hoffmeister	1	"	4 00
		M. McDonald			
		Seavey & Co.	⅙	"	
		Fuller, Dana & Fitz	1	"	
		H. A. Jamieson & Co.	½	"	9 00
		W. P. Stratton & Son	⅓	"	4 00
		Stevens & Dunkler	1–12	"	9 00
	5.	Fuller, Dana & Fitz	1–12	"	
		Emery & Smith	1–4	"	4 00
		C. C. Smith	½	"	4 00
		Beecher & Copeland	1–12	"	9 00
		H. G. Tinker & Co.	1	"	4 00
		J. C. Long, Agent	1	"	4 00
	6.	M. Sears	½	"	4 00
		J. F. Bingham	2	"	4 00
		E. M. Brewster	1	"	4 00
		Miller & Green	¼	"	4 00
	8.	C. W. Willard	½	"	4 00
		Fuller, Dana & Fitz	1	"	
		J. D. Small	1	"	4 00
		Stevens & Dunkler, mam.,	1–12		
		W. T. Twitmire	1	"	4 00
		Harry K. Hicks	1	"	4 00
		Harry K. Hicks	⅙	"	9 00
	9.	Davis & Larnard	1	"	4 00
		E. B. Griffith	1	"	4 00

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		J. V. Buck	3	doz.	

1879.

Sept.	9.	T. S. Cobb & Son	1	doz.,	$4 00
		C. H. Berry	1/6	"	4 00
		George W. Yeager	1/4	"	
		Altoona Hardware Co	1/2	"	9 00
		Fries Hardware Co	1-12	"	9 00
		Fries Hardware Co	1	"	4 00
		J. B. Silkeimer	1	"	4 00
		C. F. Lyons	1/2	"	4 00
		C. M. Bailey	1	"	4 00
	10.	S. N. Dickinson	1/2	"	4 00
		A. A. Parker	1/4	"	4 00
		Smith & Pool	1/2	"	
	11.	Rutherford & O'Cranky	1/2	"	
		G. W. Lawrence	1/4	"	
		G. W. Lawrence	1/2	"	
		S. May & Co	1/6	"	
		E. G. Clapp	1/4	"	
		J. H. Chase	1/2	"	
		H. L. Sackrider & Sons	1/2	"	4 00
	12.	Nelson & McCutcheon	1 1/4	"	
		Davenport Bros	1-12	"	
		A. L. Young	1	"	
		Boardman & Cutting	1/4	"	9 00
		Boardman & Cutting	1	"	4 00
		M. R. Pierce & Co	1	"	4 00
		Samuel Wilder	1	"	4 00
		C. Dreisbach	1/2	"	9 00
	13.	A. French & Co	1-12	"	
		O. T. Howe	1/2	"	
		A. H. Ester	1-12	"	4 00
		N. B. Hussey & Co	1	"	4 00
	15.	Evans & Gale	1/2	"	4 00
		H. E. Brawn	1/2	"	4 00
	16.	Laforme & Frothingham	5	"	
		Rogers & Co	1	"	
		Sausser, Buern & Co	1/4	"	9 00
		F. E. Libby	1/2	"	4 00
		Lord & Linnell	1	"	4 00
		F. D. Chaut	1/6	"	4 00
	17.	H. C. Brown	3	"	4 00
		Gates & Spratt	1	"	4 00
		A. N. Beadle	1	"	4 00
		C. A. Tilton	1/4	"	4 00

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Sept.	17.	Hoover & Bro.	1-6	"	9 00
	18.	Shaugnessy Bros.	1	"	4 00

1879.				
Sept. 18.	Macomber, Bigelow & Douse	½	doz.	
	Hunt & Davis	1	"	$4 00
	Henry Colby	1	"	4 00
19.	Gray & Foss	1		
	Nichols Bros.	½	"	4 00
	J. F. Boynton	½	"	4 00
	F. A. Walker	½	"	4 00
20.	Smith, Cohn & Co.	1	gross.	
	George H. Mason & Co	¼	doz.	
	Getz & Horn	1	"	4 00
	O. F. Howe	5	"	4 00
22.	F. & H. Born	1–6	"	30 00
	F. & H. Born	2	"	4 00
23.	W. L. Jackson	⅓	"	
	Frye, Phipps & Co.	1–12	"	
24.	Murray Bros	½	"	
	W. M. Williams	2	"	4 00
	George Fischer	1	"	
	J. H. Carlton	1–12	"	
	J. M. Robbins	½	"	4 00
25.	G. C. Hubbard & Co.	2	"	4 00
	Holt & Mason	1	"	4 00
	C. S. Perkins	½	"	4 00
26.	M. H. Webber	1	"	4 00
	Murray Bros	½	"	
	J. H. Carlton	1–12	"	4 00
	L. E. West	½	"	4 00
	C. Peabody & Son	1	"	4 00
27.	G. E. Hapgood	⅓	"	4 00
	E. E. Gould	1	"	4 00
	W. S. Jenks & Co.	2	"	
	T. P. May & Co	6	"	
	S. May & Co	5	gross.	
	F. A. Walker	1	doz.	
	Harlow	14	gross.	
	Retail by mail	1 1-6	doz.	

238 And on the 13th day of October, 1880, Defendants' exceptions to Master's report were filed in the words and figures following, viz.:

United States Circuit Court, District of Connecticut.

DOVER STAMPING COMPANY
vs.
TURNER & SEYMOUR, M'F'G Co. } In Equity.

Defendants' Exceptions to Master's Report.

Exceptions taken by the defendants to the report made herein by

E. E. Marvin, Esq., the Master to whom the cause was referred by an order of this court, which report bears date the 13th day of September, A. D. 1880.

First exception. For that the Master in his report assumes that the price paid by the defendants for labor in making the infringing beaters was five $\frac{97}{100}$ dollars per gross before the first day of April, 1877, and three $\frac{94}{100}$ dollars per gross after the first day of
239 April, 1877, instead of finding that the prices paid by the defendants in making the infringing beaters for labor during both said periods were as embodied in the defendants' account.

Second exception. For that the Master ought not to have fixed the prices paid by the defendantsf or labor in making the infringing beaters, by finding the prices paid by a third party, (the Lamb Knitting Machine Company,) for labor in making beaters constructed under letters patent issued to one Turner Williams, and adopting the cost of labor to such third party on those beaters, as the measure of the cost to the defendants of labor in making the infringing beaters.

Third exception. For that the Master ought not to have found that the prices paid for labor by the defendants in making the infringing beaters so varied from year to year, as to have in 1875 seven $\frac{59}{100}$ dollars per gross, in 1876, four $\frac{96}{100}$ dollars per gross, in 1877, four $\frac{41}{100}$ dollars per gross, in 1878, four $\frac{14}{100}$ dollars per gross, and in 1879, three $\frac{75}{100}$ dollars per gross.

240 Such finding is erroneous for the reason that upon the evidence, and in fact the amount per gross expended by the defendant's for labor upon the infringing beaters, did not vary from year to year, but was substantially the same during the entire period covered by the accounting.

And for the further reason that the finding of the Master as to the variation in prices paid by the defendants during those years for labor on the infringing machines, was not, and does not, purport to be based upon any evidence of any actual variation in the prices paid by the defendants, but was, and purports to have been, imputed by the master to the defendants in reforming their accounts as rendered, because, and only because, a third party (the Lamb Knitting Machine Company) claimed to have succeeded in reaching, during those years, that ratio of reduction in prices paid by it for labor upon beaters of its manufacture.

Fourth exception. For that the Master in his finding of the cost to the defendants of labor on the infringing beaters, was guided to an erroneous conclusion.

241 First. By finding that the defendants' witness, Brothwell, ought to be discredited by reason of the small margin of profits shown in the defendants' account.

Second. By finding that the complainants' witness, Page, had, as compared with the defendants' witness, Brothwell, the largest experience in the matter concerning which they respectfully testified.

Third. By ignoring the evidence as to the actual cost to the defendants of labor upon their infringing beaters, and substituting the asserted cost to the "Lamb Knitting Machine Company," of labor upon beaters of different structure manufactured by it for the Dover Stamping Company.

Fourth. By an inspection of specious similarities between the structures represented by the beaters manufactured under letters patent issued to one Turner Williams, and the beaters manufactured by the defendants, and upon such inspection comparing the supposed cost of labor upon the two classes of beaters.

Fifth exception. For that the master ought not to have found that all the profits from the manufacture and sale of the
242 infringing beaters were due to the device described and claimed in the Earle patent, but he ought to have found that all such profits were derived in part from the other patented devices embodied therein, in part from manufacturers profits.

JNO. S. BEACH,
Defendants' Solicitor.

[And on the 14th day of April, 1881, opinion of court confirming Master's report was filed in the words and figures following, viz:]

243 Circuit Court of the United States for the District of Connecticut:

DOVER STAMPING COMPANY *vs.* TURNER & SEYMOUR M'F'G CO.

Shipman, J: The question now at issue between the parties is upon the confirmation of the Master's report that the defendant's profits were $\$10{,}601\frac{86}{100}$ and that plaintiff's damages were nominal. The plaintiff moves to confirm the report; the defendant has filed five exceptions thereto.

The first four of the defendants' exceptions state in various forms its objections to the result which the Master reached in regard to the labor account of the defendant upon the infringing egg-beaters and to the standard which he adopted for the determination of the cost of labor.

The defendant made its beaters by day's work except that the "assembling" was done by contract. Mr. Brothwell, the defendants' superintendent, estimated the cost of seventeen different items of work. Mr. Page, the superintendent of the Lamb Knitting Company, which made the Dover Beaters for the plaintiff, estimated the same items at much lower prices. The defend-
244 ants' criticism is that the master has taken Page's estimate, he neither knowing what the defendants' beater cost nor what the different of the Dover cost except by hearsay, as a standard in preference to Brothwell's testimony, which was based upon actual knowledge.

The Master's report shows that he regarded the estimate of

neither as correct. Brothwell's statements were but estimates of the cost of different parts. He says that he made memoranda of tests which were taken at different times of the amount of the various items of work which were done in a day, but these memoranda were not produced. Page's statements were not based upon knowledge. From other facts in the case Brothwell's estimates did not appear to the Master to be accurate. The plaintiff proved what was paid for all the labor upon the Dover Beaters to the sole contractor for the five years from 1875 to 1879, inclusive. Upon these prices the contractor made whatever profits he did make. The Master says in his report:

"The evidence and the inspection of the two beaters shows that most of the details of the labor are precisely similar, and that the whole of them are so nearly so that proof of the cost of the
245 actual labor upon the Dover is a very safe guide in attempting to arrive at the cost of the Family upon the disagreeing evidence in the case, and it is quite important that I am enabled to do so. I consider it safer than any amount of estimates.

"The evidence of Page and Jenks are but estimates as to the cost of details, with which—although they superintend and manage them—they cannot be entirely familiar; and the evidence of Brothwell, wherein it is improbable, is no better. It is but the remembrance of certain test work at certain times, whether before or after the workmen performing the labor of the test were familiar and dextrous with their parts, bring left in doubt, and can in no sense be regarded as a statement of the actual cost to the defendant of the labor per gross expended upon the beaters covered by the accounting."

From an examination of the testimony I am satisfied that the master was right in turning away from both Brothwell & Page, and in taking the price actually paid for the Dover Beaters as the starting point.

He then found from a comparision of the testimony of the witnesses with the exhibits, that fifteen per cent. more labor was expended on the defendant's than on the Dover Beaters.

246 Page though that there was ten per cent. more labor expended on the Dover than on the Family and Washington, the defendant's beaters. Jenks, a witness for the defendant, thought that there was twenty-five per cent. more work on the Family than on the Dover. While this computation produces a large amount of profits, I am not satisfied that the amount is incorrectly large.

The fifth exception is that the Master ought not to have found that all the profits from the manufacture and sale of the infringing beaters were due to the device described and claimed in the Earle patent, but he ought to have found that all such profits were derived in part from other patented devices embodied therein, and in part from manufacturers' profits.

It seems to me that when the defendant took from the Dover Beater the thin blades of the Earle patent the defendant took all

there is in its beater, except what was allowed by the Master, the value to the Washington Beater of the F. W. Seymour patent.

The exceptions are overruled, and the Master's report is confirmed.

247 THOMAS W. CLARK
and ELIAS MERWIN,
For the Plaintiff.
JOHN S. BEACH,
For Defendnnt.

248 And on the 26th day of April, A. D. 1881, the following final decree was made and entered in said cause, viz:

U. S. Circuit Court, District of Connecticut.

DOVER STAMPING CO. *vs.* THE TURNER & SEYMOUR M'F'G CO.

Final Decree.

After a decretal order for injunction and account had been entered in the above-entitled cause in the September term, 1879, referring it for taking the account to E. E. Marvin, Esq., as master *pro hac vice*, the cause was continued for the Master's report; and thereafter, in the April term, 1880, the Master's report, *and thereafter, in the April term*, 1880, *the master's report*, came in, and the exceptions thereto were filed by the defendants at the said April term and the same was thereupon continued to the September term, 1880; and at the September term, 1880, came on to be
249 heard upon the Master's report and exceptions, and was argued by counsel, to wit: by Mr. John S. Beach for defendants, and by Mr. T. W. Clarke and by Mr. Elias Merwin for complainants, and was taken under advisement by this court, and was continued to hear judgment; and now at this April term, A. D. 1881—

It is ordered, adjudged, and decreed, on motion of Mr. Thomas William Clarke, of counsel for complainants—

(1) That the defendant's exceptions to the Master's report be overruled.

(2) That the Master's report be confirmed.

(3) That the complainants recover of the defendants the sum of ten thousand six hundred and one $\frac{86}{100}$ bollars ($10,601.86) as profits made by defendants by their infringement, and that complainants have suffered no damages in excess thereof.

(4) That complainants recover of defendants their costs of suit to taxed.

N. SHIPMAN,
District Judge.

250 I, Edwin E Marvin, clerk of the United States circuit court for the District of Connecticut, do certify that the foregoing is a true return of the record of said court in the cause of Dover Stamping Company against The Turner & Seymour M'f'g Co.

In witness whereof, I have set hereto my hand and the seal of said court, at Hartford, in said district, this 12th day of July, A. D. 1881.

[SEAL.] E. E. MARVIN, *Clerk.*

Endorsed on cover: Connecticut C. C. U. S. No. 268. The Turner and Seymour Manufacturing Company, appellant, *vs.* The Dover Stamping Company. Filed 23d July, 1881.

111-319

OFFICE SUPREME COURT U. S.
FILED
JAN 28 1884
JAMES H. MCKENNEY, Clerk.

Supreme Court of the United States.

TURNER & SEYMOUR MFG. CO.,
APPELLANTS,

vs.

DOVER STAMPING COMPANY,
APPELLEES.

In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SECOND CIRCUIT,
AND FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR APPELLANT.

JOHN S. BEACH,
JOHN K. BEACH,
of Counsel.

NEW HAVEN:
TUTTLE, MOREHOUSE & TAYLOR, PRINTERS.
1884.

Supreme Court of the United States.

TURNER & SEYMOUR MFG. CO., *Appellants,*

vs.

DOVER STAMPING COMPANY, *Appellees.*

In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SECOND CIRCUIT, AND FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR TURNER & SEYMOUR MFG. CO.,

Appellant and original Defendant.

STATEMENT.

Letters Patent were issued to Timothy Earle, bearing date July 15, 1863, for "an Improvement in Egg Beaters."

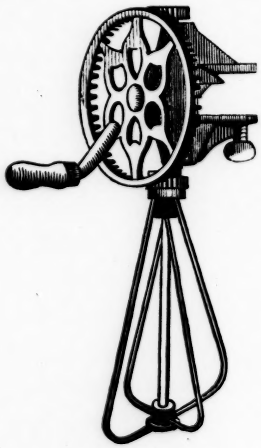
The patent recited (*Record, page* 74),

"Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process.

One of these devices consists of two wire frames, one within the other, and made to revolve in opposite directions; another

consists of a propeller blade inside of a wire frame, and blades being made to revolve in opposite directions; and still another consists of a propeller blade which is made to revolve while a pair of beaters have at the same time a reciprocating motion."

The first of these old devices may be thus illustrated:



The patent further recites—

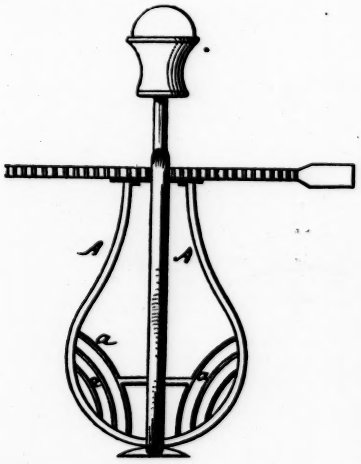
"All these machines with which I am acquainted possess the common fault that the beaters, whether of wire or of the form of propeller blades, do not cut the white or yolk of the eggs but literally beat them.

Now as the albumen of an egg consists of a peculiar thick glairy substance it can be worked more effectually with a cutting instrument than with one that has a blunt edge. In fact, so well is this understood that housewives commonly make use of the blade of a knife for the purpose."

The patented mode of obviating the difficulty referred to, is described as consisting of an outer frame large enough to permit an inner frame to revolve within it.

"The inner frame is provided with a series of cutters, *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in many different places."

As shown in the drawing:



The single claim of the original patent is:

"What I claim as my invention and desire to secure by Letters Patent is the use of a series of cutting edges, *a*, *a*, *a*, *a*, when attached to a frame A, which is capable of being revolved substantially as described for the purpose specified."

(Record, page 76.)

The appellant's beater is of this construction:

In 1875, some years after the appellants began the manufacture of these beaters, the appellees, having prior to that time become the assignees of the original patent, surrendered it, and procured a re-issue bearing date July 13, 1875, which is the patent now in suit.

The text of the re-issue, as compared with that of the original, may be found on page 74 of the Record.

The single claim of the original was discarded and two new claims substituted.

"What I claim is—

1st. The revolving beater frame formed of thin plain blades or cutters, arranged to cut edgewise through the material by their rotation substantially as described.

2d. The combination of the fixed frame which contains and supports the operative machinery, provided with a foot or support at the bottom, a handle at the top and suitable mechanism for rotating the beater substantially as described."

(Record, page 76.)

The answer of the appellants

"admits that the said original Letters Patent were surrendered by the complainants and a new patent was issued to them at the date alleged in said bill, but on information and belief they deny that such new patent was for the same invention as that set forth in said original patent, but they aver that the same was for a different device and invention, and therefore void."

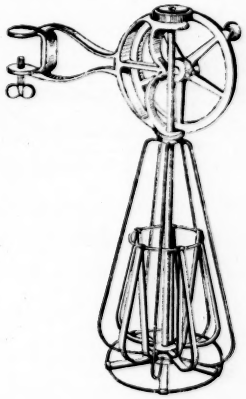
(Record, page 8.)

The other issues raised by the answer are, denial of infringement, and that the invention

"was in public use and on sale in this country more than two years before the application of said Earle for his patent."

The Circuit Court held the re-issued patent to be good and valid, and also adjudged that although the beaters made and sold by the appellants did not infringe the single claim of the original patent, they did infringe the first claim of the re-issue.

Upon the issue of prior use and sale of the invention before the application of Earle which was filed December 22, 1862, the Court found that one Samuel Ayres made and sold fifty dozen beaters between May 1, 1860, and December, 1860.



Of these beaters there were sold during 1860, in May, 77; in June, 182; in July, 166; in August, 39; and in September, 162; and to purchasers in Massachusetts 186; in Pennsylvania 172; in New York 120; in Maine 33; in Vermont 18; in Connecticut 12; in New Hampshire 11; and in Illinois 6.

(*Record, page* 52.)

As to the legal effect of the public use and sale of the Ayres beater for more than two years prior to the application of Earle, the Circuit Court, noting, but

passing, certain questions of law involved, held (Record, page 79),

"The Ayres beater has an inner revolving frame of thin metal, and on paper it was an anticipation of the Earle patent, but it was practically an unsuccessful instrument. * * * Assuming that the sale by Ayres for more than two years before the inventor's application is a good defence, I do not think that Ayres' sale of an unsuccessful and useless device, though it contains the principle of the Earle invention, is a sale which should invalidate the Earle patent. * * * Let there be a decree for an injunction and an accounting in reference to the use of the invention recited in the first claim."

As the result of the accounting, the master reported that the appellees had suffered no damage from the infringement.

He reported profits made by the appellants on egg beaters manufactured and sold by them during the period covered by the accounting to be $10,601.

Record, pages 85 *and* 90.

As to what proportion of these profits was due to the patented device, the master reports, "he was furnished with very meagre evidence," and he therefore awarded the entire profits on the manufactured articles to the appellees. (*Record, page* 85.)

To this report the appellants excepted.

(*Record, page* 173.)

The exceptions were overruled, and the master's report confirmed. (*Record, page* 175.)

A final decree was passed that the complainants recover of the defendants the sum of $10,601.86 as profits made by the defendants by their infringement. (*Record, page* 177.)

From this decree the defendants appeal.

Errors Assigned by the Appellant.

First.

The Circuit Court erred in its decree, adjudging "that the Letters Patent of the United States granted unto the Dover Stamping Company, July 13, 1875, as re-issue No. 6542 of Letters Patent No. 39,134, granted Timothy Earle, dated July 7, 1863, was a good and valid patent." (*Record, page* 80.)

The appellent alleges that such decree was erroneous in that said re-issued patent was invalid.

1st. Because the claim of the re-issue, which was adjudged to be infringed, is broader than the claim of the original patent.

2d. Because of the duration of the interval between the grant of the original patent and the application by the appellees for its re-issue.

3d. Because of the use and sale of the patented invention for more than two years prior to the application by Timothy Earle for the original patent granted him July 7, 1863.

Second.

The Circuit Court erred in its decree adjudging "that the defendants have infringed the first claim of

said patent, and upon the exclusive rights of the complainants under the same." (*Record, page* 80.)

The appellant alleges that such decree was erroneous,

1st. Because said Court, having found that the defendants had not infringed the single claim of the original patent, should have construed the first claim of the re-issued patent to be no broader than the single claim of the original.

Third.

The Circuit Court erred in its decree adjudging "that the defendant's exceptions to the master's report be overruled and that the master's report be confirmed." (*Record, page* 177.)

The appellant alleges that such decree was erroneous,

1st. Because the master's report in its computation of profits, excluded all items of cost paid for labor upon its beaters by the appellant, and substituted items paid by a Massachusetts corporation for labor on beaters, made by that corporation.

2d. Because the master's report did not apportion the profits due to the patented device, but awarded to the complainants the entire profits of the appellant's manufacture.

First Point.

The Letters Patent, No. 6532, bearing date July 13, 1875, is invalid as a re-issued patent, and confers upon the appellees no exclusive rights to the thing therein described and claimed.

First—Its claims are broader than the claim of the original patent.

I. It was so adjudged by the Circuit Court. That Court held that if the first claim of the re-issue (which was the only one in controversy) was to be construed as no broader than the single claim of the original patent, there was no infringement.

Quoting from the opinion:

"The question of infringement of the first claim of the re-issued patent depends upon the construction of the claim. If it should properly be limited so as to be confined to the frame with the cutters or blades which are described in the *specification and in the drawings*; to wit: a frame, with the cutters *a*, *a*, *a*, *a*, then there is no infringement."

(Record, page 78.)

II. The reasons given by the learned judge fully justify (and we submit them without further argument on that point), his conclusion that the defendant's beater was not an infringement of the single claim of the original patent. He says, (*Record, page* 88),

"The single claim of the original patent was as follows:

What I claim * * * is the use of a series of cutting edges, *a*, *a*, *a*, *a*, when attached to a frame A which is capable of being rotated substantially as described and for the purpose specified. * * * The cutting portion of the defendant's beater consists of an inner and outer frame: * * * each frame is composed of two curved pieces of tin joined together * * so as to make nearly a circle: these pieces are thin, plain flat pieces of tin and are so arranged as to cut edgewise through the material by their rotation. In neither the inner nor the outer frame are there any additional blades or cutters like the blades *a*, *a*, *a*, *a*."

III. The Circuit Court sustained the claim of the appellees, and adjudged infringement of the first claim

of the re-issued patent because, and only because, it was in the opinion of the Court, to be construed as being broader than the single claim of the original patent.

Quoting further from the opinion of that Court (*Record, page* 78),

"The original and also the re-issued specification dwelt upon the particular form of the cutters of the inner frame, and the original claim limited the invention to the cutters *a, a, a, a*, etc.; but the scope of the invention was larger, and the principle was embodied in any revolving frame composed of thin and plain as distinguished from corrugated, cutting surfaces so arranged as to cut edgewise through the material. * * * Such a construction is attempted to be given to the re-issued claim as would limit it to the precise language of the surrendered patent. The patent was surrendered because the grant was not co-extensive with the invention, and it would be an unnatural construction of the re-issued patent which should cramp the claim within the limits which had been discarded. In my opinion the natural meaning of the words used is to be permitted, and giving to the claim such a freedom of construction, the defendant's device is an infringement."

Second—The delay between the granting of the original Letters Patent to Timothy Earle and the application for its re-issue to the appellees, was unreasonable and involved gross laches on the part of the patentee and his assignees.

I. The original patent was issued and dated July 8, 1863. The application for a re-issue was made June 7, 1875, and the re-issue was granted and dated July 13, 1875.

II. During that interval the appellants were manufacturing and selling the egg beaters now in contro-

versy. The precise period when they began such manufacture does not appear on the record. But it does appear that in 1874 the appellees began to chafe under the competition of the appellants, which they sought to suppress by their application for the re-issue in 1875.

See testimony of L. Bacon Foss, general manager of the Appellee's Corporation, (*Record, page* 108).

Question 6. When did the Turner & Seymour competition begin, and when did it cease?

Answer. It began to be felt in 1874, and I have never known it to cease.

III. These conceded facts are fatal to this re-issue:

Miller vs. Bridgeport Brass Co., 104 U. S. 350.
James vs. Campbell, 104 U. S. 356.
Heald vs. Bacon, 104 U. S. 737.
Matthews vs. Machine Co., 105 U. S. 54.
Bantz vs. Frantz, 105 U. S. 160.
Johnson vs. Railroad, 105 U. S. 539.
Moffit vs. Rogers, 106 U. S. 423.
Gage vs. Herring, 2d Supreme Court Rep. 824.
Clements vs. Odorless Co. 26, O. G. 353.

Second Point.

The Record discloses that there was no infringement by the appellants of the exclusive rights of the appellees under the first claim of the re-issue.

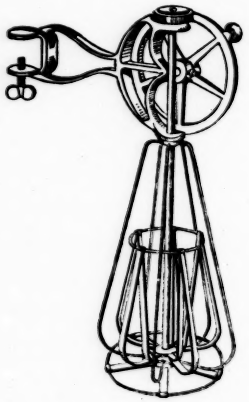
I. If that claim ought to have been so construed as to be no broader than the single claim of the original patent, there was no infringement, for the reason that the defendant's beater was, as it was found by the Circuit Court to be, outside of the scope of that claim.

II. If that claim ought to have been construed, as by the Circuit Court it was construed, to be broader than the claim of the original patent, there was no infringement, because there remained in judgment of law, under such invalid claim of an invalid patent, no exclusive rights capable of infringement.

THIRD POINT.

The invention claimed and described in the original patent issued to Timothy Earle, July 7, 1863, was in public use and on sale more than two years prior to the application of said Earle for a patent therefor.

First—It was proved and found by the Circuit Court to be true, that more than two years prior to the Earle application there were sales of at least fifty dozen of beaters, known as "Ayres' Beaters," and in nine different States, and to thirty different dealers.



I. The Circuit found (as is apparent upon inspection),

"The Ayres beater has an inner revolving frame of plain thin metal."

But it is also apparent upon inspection that (quoting from the original patent of Earle) the Ayres' beater

"consists of a frame mounted upon a spindle around (and with) which it can freely rotate, an outer fixed frame of the same general form as the inner one but large enough to permit the inner frame to rotate within it, is attached to the spindle and furnishes a support for it. The inner frame is provided with a series of cutters (which may be marked *a*, *a*, *a*, *a*), arranged in a suitable manner for cutting the fluid in many different places."

There can be no doubt therefore that the Ayres beater embodies the invention set forth in the first claim of the re-issue.

Indeed the Circuit Court found that it was "on paper an anticipation of the Earle patent."

(*Record, page* 79.)

II. But it is said that the Ayres beater is not a practical beater.

The Circuit Court say (*Record, page* 79),

"The principle was not embodied in the machine in a useful or practical form; and although Ayres had conceived the idea of cutters or blades he had not practically made the idea valuable to the public. Assuming that a sale by Ayres of the patented invention before the inventor's application is a good defence, I do not think that Ayres' sale of an unsuccessful and useless device, though it contain the principle of the Earle invention, is a sale which should invalidate the Earle patent."

We respectfully submit that the learned judge was in this respect wrong both as to the fact and the law.

1st. As to the fact of its inutility.

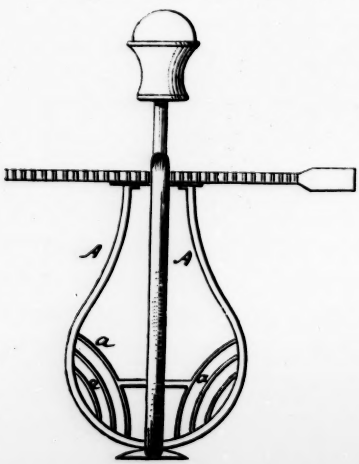
The presumption is certainly against the suggestion, when it appears that more than five hundred were sold to more than thirty different purchasers, all dealers in the article of egg beaters, and competent judges.

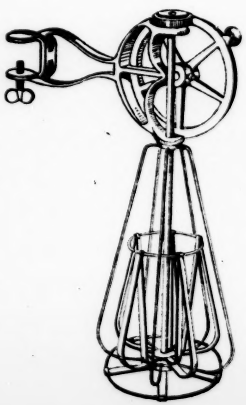
One of these dealers, it appears (*Record, page* 74) made two different purchases of half a dozen each, in May, 1860, and in the September following purchased six dozen more.

Not a syllable of complaint was ever heard from any of these five hundred customers of these thirty odd dealers.

The appellants had no occasion to anticipate that as between the two devices, Ayres and Earle, it being conceded that both embodied the same principle, there could be any claim, much less any adjudication, that in the former the principle was embodied in an useless and impracticable form, and in the latter in a useful and practical form.

Compare the two devices.





The only witness called by the appellee whose testimony tended to show defects in the Ayres beater pointed out certain features as imperfections common to both, and identical in each.

Edwin P. Munroe (*Record, page* 30):

Int. 9. During your dealings with the parties you have mentioned as customers of yours in 1860, did you ever run across the Ayres egg beater; and if so, did you consider it at that time a competitor?

Ans. I did, several times; when I first saw it I thought it so like my own in its general appearance that from its resemblance it might sell so as to be an injury to me, but I never considered it a practical egg beater.

Int. 11. Please look at complainant's Exhibit, Ayres' beater, and say whether or not that is the sort of egg beater known to you as the Ayres egg beater; and if not, how did it differ in any way from that?

Ans. This is one form of it; another form was substantially the same, except that in *place of the friction gearing, cog wheels were used.*

Int. 12. In your answer to Int. 9 you say you did not consider the Ayres egg beater practical; will you please give the reasons why, and whether those reasons are still, in your opinion, valid?

Ans. In the machines made with the friction gearing the driving-wheel might be turned without revolving the beater; and in the best that I have seen of this form there was not sufficient adhesion in the gearing to beat eggs to a froth; they overcame this difficulty by adopting the cog wheels, similar to what I was using in egg beaters of my manufacture. But after this was done it was still an impracticable machine, principally on account of the close juxtaposition of the two elements of the beaters, which would form a place of lodgment for the liquid egg, which would be impossible to remove after it became rancid or stale. Another difficulty I found in the softness of the tin used in forming the beater, as the beaters would be bent

and disarranged upon slight cause. I also found it defective on account of the comparative size of the driving-wheel and pinion, it not having sufficient speed in the rotation of the beaters. I also considered it objectionable to use strips of tin for the beaters as the edges would become corroded so that they would be uncleanly, and, on account of the roughness of the edge, difficult to clean. I have not seen occasion to change my opinion of it.

Cr. Int. 20. You were sued by them (the complainants) on this patent, were you not?

Ans. I was.

Cr. Int. 21. Did you set up the Ayres egg beater as one of the defences in that case?

Ans. I did.

Cr. Int. 22. The suit was compromised, was it not?

Ans. It was.

Cr. Int. 23. Were you aware of the defects of the Ayres egg beater while you were defending your suit?

Ans. I was.

Cr. Int. 24. What parts of the Ayres egg beater do you think were so close together as to form a place of lodgment of a liquid egg which it would be impossible to remove?

Ans. Where the different members of the beater came in contact; especially at their points of attachment with the central shaft and the outer braces or supports.

Cr. Int. 25. What defective construction do you find in the edges of the arms of the Ayres beater?

Ans. As they appear to have been cut from sheet tin, the edges would necessarily be of iron, which would be more readily corroded than the portions having tinned surfaces.

Cr. Int. 26. Would the same difficulty be found in all egg beaters whose cutters or blades are pieces of sheet tin?

Ans. I think it would.

Cr. Int. 27. When a person has finished using the egg beater is it not usual and proper to immediately clean it with hot water?

Ans. It is proper, and should be usual; but from the knowledge that I have more egg beaters are cleaned in cold, or nearly cold, water than otherwise.

Cr. Int. 28. Do not the points of union of the Earle beater, complainant's Exhibit C, afford places where the egg matter might lodge if not properly cleaned?

Ans. But slightly so in comparison with the Ayres arrangement; the points of attachment or connection of the different members *being filled and rounded with solder.*

The imperfections thus pointed out by Munroe in the Ayres beater are of two classes, those relating to the rotating mechanism, and those relating to the beating mechanism. He finds fault with the friction gearing, but admits that Ayres often employed the cog gearing then in common use. He says the pinion was relatively too large for the driving wheel; if this was so in the specimens he saw, it was obviously the fault of the mechanic in not using a smaller pinion and did not affect the principle embodied in the rotating mechanism.

As to the rotating mechanism of the Ayres beater, in which the invention resided, he points out as defects the too close juxtaposition between the inner and outer frame at their points of attachment, forming a place of lodgment for the fluid egg, and also that the beaters are made from strips of sheet tin, which are soft and liable to corrode and exhibit roughened edges.

But the first of these defects he is compelled to admit, existed to the same extent in the Earle organization until the mechanic—not aided by the patent however—filled up and "rounded the place with solder."

The remaining defect pointed out by Munroe in the Ayres beater is that its cutters were "pieces of sheet tin."

This feature was not only common to it and the Earle beater, but the Earle patent specifically points out as its distinguishing features,

"The inner frame is provided with a series of cutters, *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in many different places. These cutters are simply *pieces of sheet tin* or other suitable metal."

We submit therefore, that whatever may have been the imperfections of the Ayres beater, it was at least as practical and useful as the beater described and shown in the original Earle patent.

III. It is said that the court is to presume that the Ayres beater was not a success because the appellants have not proved the sale of more than fifty dozen.

The answer is

1. The proof of the appellant was restricted to a period antedating by two years the Earle application.

2. That the only specimen of the Earle beater ever manufactured in the form described and shown in the original patent, was the model in the Patent Office.

The original Earle patent was purchased by the appellees. Their manager, Mr. Foss is asked (*Record, page* 108),

Int. 3. In what form did your company put on the market the egg beaters with cutting edges, as described in the Earle patent, from the year 1874 to the present time?

Ans. They were put on the market in the form of what is known as the Dover egg beater, chiefly.

Neither Mr. Foss nor any other of the many witnesses who testified to their long experience in the business, on either side, ever saw or claimed to have seen in the market for sale, a single beater (except the Ayres beater,) which had "an inner frame provided with a series of cutters *a*, *a*, *a*, *a* arranged for cutting the fluid in many different places * * so placed that their edges shall cut the material to be agitated when the frame is rotated."

We submit, therefore, that the learned Judge ought not upon this issue of fact, in his comparison of the Ayres beater with the Earle beater, to have discarded the Ayres as an impractical device in favor of the original Earle as a practical device, especially in view of the uncontradicted testimony of the appellants witnesses, that such a device as is described and shown in the original patent of Earle would be "unmarketable." (*Record*, *page* 124,) "unsalable at any price." (*Record*, *page* 126,) "of no value." (*Record*, *page* 129.)

III.

The application of Ayres was rejected July, 1860. If he had persisted in his application and had in 1862 been put in interference with Earle, and Earle could not have antedated Ayres, it is clear that in view of the state of the art as then existing, priority of invention would have been awarded to Ayres.

If this be so, it is equally clear that the prior use and sale of the Ayres beater prior to the Earle application is fatal to his patent, unless there be some peculiarity in *this* patent extricating it from this fatality.

It is claimed by the appellee that as this patent was granted in 1863,

"the defences against its validity are confined to those which were specified in the statutes which were in force at the time when the patent was issued, and that the statute of 1836 authorized the defence of two years' public use or sale only when such use or sale was 'with the knowledge or consent of the patentee.'"

1st. The act of 1839 so far modifies that of 1836, as that such prior use or sale avoids the patent "even without the consent and allowance of the inventor."

Egbert vs. Lippman, 15 Blatch. 296.
Same vs. Same, 104 U. S. 333.

2st. The property evidenced by the Letters Patent of 1863 was created and existed only by virtue of statutory enactment. The government which created the property could at any time modify or abridge the remedial rights for its protection.

3d. The Act of 1836 was repealed at the time this suit was brought. None of its provisions therefore could be invoked by the plaintiff except such as were expressly saved for him under the repealing act. "A repealed statute is as if it had never existed."

4d. The repealing act was the act of 1870. That act saved all *existing* causes of action, but, even as to those it provided, that in all suits thereafter to be brought *the remedial provisions* of the Act of 1870, and not those of the Act of 1836 should apply (Act 1870, S. 111). These remedial provisions are to be found in sections 55 and 61 of that act, which enact as a

valid defense the public use or sale of the invention in this country, for more than two years before the application, and omit the qualification of the consent or knowledge of the patentee.

If therefore this bill was based upon a cause of action which has arisen prior to and was existing in 1870, the appellee could not in aid of its remedy, invoke any of the provisions of the Act of 1836.

Bates vs. Coe, 98 U. S. 31.

5th. But the cause of action upon which this bill is based, did not originate under the patent of 1863 issued to Earle. It is based upon a grant from the government to the appellee issued in 1875. The appellee became entitled to and received that grant, that "*new patent*," not under the statutes of 1836 or of 1839, but under the enactments of 1870 and of 1875. Under these enactments, the appellee as the assignee of Earle became entitled to receive and did receive the new grant, only upon the condition precedent thereto, that all rights and remedies under the patent of 1863, should be, as they were, surrendered and extinguished.

6th. We submit therefore that the appellee under this re-issued patent of 1875, must find its cause of action and its remedy therefor, under the enactments of 1870 and 1875, and that among other valid defenses they enact, is that of a public use or sale of the invention in this country, more than two years prior to the application for the original patent.

Fourth Point.

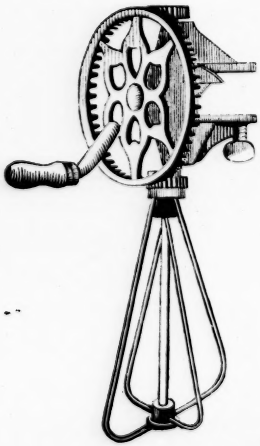
There was no patentable invention described in Letters Patent issued to Timothy Earle July 7th, 1863.

First.—This proposition is not intended to apply to the original patent and its claim, as construed by the Circuit Court. We have no occasion to dispute the patentability of the device when limited to "the use of a series of cutters *a*, *a*, *a*, *a*." But when the scope of the claimed invention is broadened so as to include the beater of the appellants, under a claim to "a revolving beater formed of thin plain cutters," its patentability is denied.

Compare these two Devices.

No. 1.

Munroe Beater.



No. 2.

Munroe Beater, with inner frame of flattened wire.

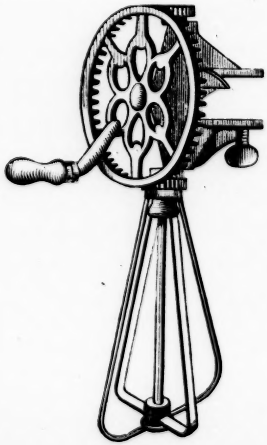


Figure No. 1 is described by the patentee in his original specification as an old device consisting "of two wire frames, one within the other and made to revolve in opposite directions." No. 2 is the same identical device with the round wire of the inner frame flattened so as to present to the fluid a cutting edge.

Earle did not claim to have discovered that a cutting edge was preferable to a blunt edge in beating eggs. He tells us in his original specification not only that this fact was then well known, but that it was "so well understood that housewives universally make use of the blade of a knife for the purpose."

It is admitted that various kinds of flat wire and among others the familiar crinoline wire were well known and on sale in the market long prior to the date of the Earle invention.

(Record, page 22.)

Where then in this state of the art was there any invention which is embodied in this structure No. 2?

What is there true of the No. 2 Munroe beater with its cutting edges, that was not true of the Munroe beater No. 1 with the round edge?

Concede that No. 2 beats better: if it does, it is not because of any difference in the mechanism that rotates the beaters, for it is identical in each, it is not because of any difference in the rotating mechanism itself, for it is identical in each, except that one is of round wire, and the other utilizes the fact known in every household, that cutting edges are better than round wire beaters.

wheels a workman drilled for a day's work of ten hours was 350, the average number of handles 250, the average number of gears 175.

(Record, pages 97 and 98.)

These factors give as their result,

Cost of drilling wheels per gross.....	$ .62$\frac{2}{35}$
Cost of drilling handles per gross.....	.83$\frac{3}{4}$
Cost of drilling gears per gross.....	1.23$\frac{5}{8}$
Total cost of drilling.....	$2.70

"The Lamb Knitting Company" also paid their workmen $1.50 per day.

Mr. Page says that the average number of wheels a workman in their factory drills for a day's work of ten hours, is 1000; average number of handles 1000, average number of gears 500 to 600.

(Record, page 105.)

These factors give as their result,

Cost of drilling wheels per gross	$ .36
Cost of drilling handles per gross.....	.28
Cost of drilling gears per gross.....	.50
	$1.14

Fourth—We do not on this appeal dispute Mr. Page's figures. We accept as a fact that a workman in the employment of "The Lamb Knitting Company" drills wheels for the "Dover" beater at the rate of one every 36 seconds of the ten hours of his day's work, not allowing for time lost in picking up and putting down each wheel, etc.

But it takes one of the appellant's workmen one minute and 48 seconds to drill one of its wheels.

What the appellant does not accept, but excepts to, is the master's conclusion that because "The Lamb Knitting Company" can drill a wheel for the "Dover" beater in 36 seconds, the appellant should be charged with an imaginary profit upon the theory that each of the wheels on its beaters has in fact been drilled with the same marvelous rapidity.

The master rejected the figures of Mr. Brothwell and accepted those of Mr. Page for the avowed reason that he considered the latter "a safe guide."

(Record, page 83.)

But this depends upon the path the master was seeking to find. If he was looking for one which would lead him to a correct conclusion as to the rapidity with which the wheel of a "Dover" egg beater can be drilled in a factory turning out by automatic machinery millions of beaters every year, each wheel interchangeable with the others, then Mr. Page, the managing agent of "The Lamb Knitting Company" of Boston was a good and safe guide.

But if he was seeking for a path to lead him to a right conclusion as to the actual cost to the appellant for drilling by hand labor, the wheels of a few hundred gross of "Family" beaters at its shop in Wolcottville, Conn., we submit that the agent of "The Lamb Knitting Company" was not a good or safe guide.

Fifth—He was an unsafe guide in that he led the master into unconscious but manifest error as to another important item of the cost of labor on the appellant's beater, an item which was the subject of exact computation and measurement because it was paid for not by the day, but by the gross.

The appellant's accounting showed that it paid $1.44 for "assembling," i. e., attaching the floats to the handle. And yet the master under the guidance of Mr. Page, "reformed" the account by crediting the appellant with only fifty cents as paid for "assembling."

(Record, page 106.)

Sixth—There is another manifest and controlling error into which the master was in like manner led.

The master found that the cost of labor on the appellant's beater, was the cost of labor on the "Dover" beater with 15 per cent. added.

(Record, page 84.)

Resulting as follows:

Cost of labor per gross on Dover beater.		Cost of labor per gross on Appellant's beater.	
1875	$6.60	1875	$7 59
1876	4.32	1876	4.96
1877	3.84	1877	4.41
1878	3.60	1878	4.14
1879	3.00	1879	3.45

and yet there is not on the record the slightest suggestion or hint—nor is the fact so—that the *actual* cost to the appellant for labor on its beaters was any less dur-

ing either of the five years succeeding 1875, than it was in that year. If it was, as we admit, less year by year to "The Lamb Knitting Company" on the "Dover" beater, it was (for as wages remained uniform during the whole period, it must have been) due to its superior mechanical and labor-saving facilities.

It may be said that the appellant might have used the same facilities. It might, if the machines were not patented.

But upon the issue of actual profits the question is not how much did the labor on the "Dover" cost, nor how much the labor on the appellant's beater *ought* to have cost, but how much did the labor on the appellant's beater *in fact* cost.

Corning vs. Rumsey, 8 Blatch. 39.
Dean vs. Mason, 20 Howard 203.
Bunnell vs. Denig, 92 U. S. 716.

We submit therefore, that the master erred in assuming that the actual cost of labor upon the appellant's beaters was nearly 100 per cent. less in 1879 than it was in 1875, because and only because, such was the experience of "The Lamb Knitting Company" on the "Dover" beater.

Seventh—The master erred in failing to apportion the profits accruing from the manufacture and sale of the infringing beaters due to the device described in the re-issued patent and recited in the first claim thereof, and in awarding to the appellee the entire profits of the appellant's manufacture, in lieu of such proper portion thereof.

I. The burden of proof was on the appellee not only to prove the profits made by the appellants in the manufacture of the infringing device, but to furnish the master with such proof as would enable him to find what proportion thereof was due to the device described and claimed in the first claim of the re-issue.

Blake vs. Robertson, 94 U. S. 734.
Garretson vs. Clark, 15 Blatch. 70.
Faulk vs. Camp, 17 Blatch. 432.
Maier vs. Brown, 17 Fed. Rep. 736.

II. The appellee failed to furnish the master with the means for making such apportionment.

The master reports,

"what proportion of profit is due to the fact that the infringing egg beaters embody beaters having cutting edges as is claimed in the first claim of the "Earle" patent held to be infringed by the opinion in this suit, is a subject upon which I am furnished with very meagre evidence.

From the fact that I am decreed to take an account of it all, I suppose I am authorized to hold and to find that this element is not a trivial element of the infringing beaters."

(Record, page 85.)

III. It was admitted by the appellee that the extent of its sales of egg beaters made under the "Earle" patent (exclusive of beaters which embodied the Turner & Williams device) since its re-issue, did not exceed 30 gross.

(Record, page 137.)

IV. The appellants claimed and proved and no witness was called by the appellee to rebut the proof, that the "Earle" device as described in the specifica-

tion and shown in the drawings, and as recited in the single claim of the original patent, had no marketable value.

(Record, pages 124, 126, 129,137.)

V. The appellant therefore submits, that the master erred,

1st. In assuming that all the defendant's profits were due to the fact that the infringing beaters had cutting edges, because the evidence with which he was furnished upon that subject was "very meagre."

2d. In assuming that a material portion of the profits must be due to such cutting edges for no reason other than that he was decreed "to take an account."

3d. In not crediting the appellant with something of its profits resulting from the conversion of an useless and unsalable device into a marketable article.

4th. In not crediting the appellants with something as due for manufacturer's profits.

Under this last point, the case presents some peculiar features.

Mr. Page the managing agent of "The Lamb Knitting Company," estimated the total amount of the cost of the "Dover" beater in 1875 to have been $20.95. He deducts certain items as paid for labor, freight, general expenses, etc., which aggregate $9.00, leaving $10.95 as the cost of material.

(Record, page 104.)

He agrees and the master finds, that the cost of material in the appellant's beater is fairly stated in their account, and that the difference in the cost of material between it and the "Dover" beater was trifling.

(Record, pages 80, 103, 105.)

The items of labor are to be found in the annexed schedule.

SCHEDULE OF COST PER GROSS OF LABOR ON THE "FAMILY" BEATER.

	Prices as fixed by Mr. Brothwell.	Prices as estimated by Mr. Page.	Prices as estimated by Mr. Jenks.
Drilling wheels	$ .60	$ .30	$ .60
Drilling handle	.90	.37	1.00
Drilling small gears	.60	.53	.70
Milling handle	.24	.15	.15
Milling wheel	.24	.15	.15
Straightening and cutting flat wire	.08	.08	.12
Straightening and cutt'g round wire	.06	.06	.08
Milling round wire	.24	.24	.15
Piercing outside floats	.12	.10	.16
Piercing inside floats	.12	.10	.16
Setting down inside floats	.06	.06	.06
Bending outside floats	.15	.08	.40
Bending inside floats	.12	.08	.10
Attaching outside floats to gear	.25	.10	.20
Attaching inside floats to spindle	.25	.10	.20
Attaching outside floats to spindle	.25	.35	.15
Riveting wheel on handle	.40	.25	.40
Riveting handle on wheel	.30	.10	.30
Milling handle rivet	.12	.05	.12
Attaching floats to handle	1.44	.50	2.00
	$6.54	$3.75	$7.20

Record, pages 97, 105, 138.

This schedule is not presented to the Court for any other purpose than to call attention to the fact that the only items of cost either of material or of labor not common to all beaters of this general character, in other words the only patented features of the "Earle" beater as claimed to be found in the appellant's beater, are the two italicized items, aggregating, as fixed by Brothwell 24 cents per gross, and as estimated by Page, 20 cents per gross, being less than *one per cent.* of the cost of the beater.

We submit that the master ought not to have awarded to the appellee, the appellant's manufacturer's profits upon the remaining *ninety-nine* per cent. of the cost of this structure.

JOHN S. BEACH,
Counsel for Appellants.

111-319

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

THE TURNER & SEYMOUR MANUFACTURING CO., APPELLANT, DEFENDANT,

v.

THE DOVER STAMPING CO., APPELLEE, COMPLAINANT.

APPEAL FROM CONNECTICUT.

APPELLEE'S BRIEF.

E. MERWIN,
T. W. CLARKE,
of Counsel.

Supreme Court of the United States.

No. 268. October Term, 1883.

The Turner & Seymour Manufacturing Co., Appellant, *Defendant*,

v.

The Dover Stamping Co., Appellee, *Complainant*.

APPEAL FROM CONNECTICUT.

STATEMENT.

This was a bill in equity, brought by The Dover Stamping Company against The Turner & Seymour Manufacturing Company, for infringement of the Timothy Earle patent for improvement in Egg-beaters, which patent was dated July 7, 1863, reissued July 13, 1875.

Defences below.

The defences below were —

First, a denial that the reissue was for the same invention as set forth in the original patent (R. 8); an averment that it was for a different device and invention, and therefore void.

Second, a denial of the exclusive possession by the patentee and his assigns, and an averment that the com-

plainants had been defeated in their attempt to enforce the patent (R. 8).

Third, a denial of infringement.

Fourth, a hypothetical averment of anticipation by United States Letters Patent to Seaman, dated October 3, 1848, and to McLean and Morley, dated June 19, 1860; and an averment of prior knowledge and use by Samuel Ayers and John W. Howe, of Worcester, Mass., at said Worcester.

Fifth, an averment that the same was in public use and on sale in this country more than two years before the application of Earle for his patent (R. 9).

Conclusions below.

The court below (Shipman, J., R. 76) sustained the reissue, and construed the 1st claim so as to hold an infringement; but overruled the evidence *in pais* and the documentary evidence of anticipation, and entered a decree for injunction, account and reference (R. 118).

Account.

Evidence was taken before a master, who reported that defendant had sold 1494¼ gross of infringing egg-beaters, or, in other words, 215,172 infringing machines, for which they received — sometimes selling them below cost, in competition with the complainants — $35,273.33. The cost of making the egg-beaters was $22,697.47. The royalty paid on some of them, at the rate of $2 a gross, was $1384, and the amount expended for special tools for manufacturing them was $590; making the sum total of defendant's expenditures $24,671.47, and leaving $10,601.86 as the net profits on this infringing manufacture.

Confirmation of Account.

Exceptions were filed by Defendants to this report, which exceptions appear on page 173 of the Record, and were argued by counsel; and the Court delivered an opinion overruling the exceptions (R. 177), and entered a final decree (R. 177) confirming the report, and ordering a recovery of $10,601.86 as profits and for Complainants' costs.

Appeal.

An appeal was entered by petition April 30, 1881; bond was given May 4, 1881; citation was issued May 7, 1881, returnable at the October term of the Supreme Court in 1881.

ALLEGED ERRORS.

The errors recited in the brief of the appellants are (p. 7)—

First. That the reissue was void for three reasons: (1) because the reissue is broader than the claim of the original patent; (2) because the application for reissue was not seasonably filed after the grant of the original patent; (3) because the patented invention was in use and on sale more than two years before the application for the original patent, that is, more than two years before December 22, 1862 (R. 37).

Second. That the Court found infringement, — for the reason that the claim of the original patent was construed as an expanded claim, more broadly than the original claim could have been construed.

Third. That the master's report was confirmed, for the reasons, (1) that the master's report excluded the actual items of the cost for labor, and substituted for them the costs

of other manufacturers for their egg-beaters; and (2) because the master's report did not separate the profits due merely to the patented device, but awarded to the complainants the appellants' entire profits from the manufacture.

These alleged errors, and the reasons given for them, are controverted by the complainant and appellee.

Appellees' Contentions.

First. The claim alleged to be infringed, being the first claim of the reissue, is no broader than the claim of the original patent properly construed.

Second. This being the case, lapse of time between the grant and the application for reissue is of no consequence.

This covers the second alleged error also.

Third. There was no public use or sale of the patented invention more than two years prior to the application for the original patent, either by the consent or allowance of the inventor, which were the terms on which he held his original patent — or as matter of fact.

Fourth. The master in his computation of profits included all the items of cost that the defendant proved, but excluded the defendants' mere estimates. And *because of the refusal of the defendants to produce their time-books for labor, and their piece-books for production*, allowed complainants to prove a fair and proper cost for the labor employed in making the infringing machine, *as one means of arriving at the actual cost to defendants of making the infringing machines.*

Fifth. No apportionment of profits should have been made by the master, because the whole structure of the complainant's patented machine was taken, as well the substance of the second claim as the matter of the first claim, and no evidence was offered by the defendants showing that there was any salable quality given to their infringing machine, except

such as was derived from the complainant's patent. And complainants proved affirmatively that all the salable quality of defendant's machine was due solely to complainant's infringed invention.

BRIEF OF ARGUMENT.

1. The reissue was valid.

Timothy Earle, the inventor of the thing patented in the Complainant's patent, was called as a witness.

He began to work on egg-beaters in 1857, and the first egg-beater he made had a cutting edge (R. p. 48, int. 3). Afterwards he made one with thin blades, as early as 1859, perhaps sooner (int. 4); and two egg-beaters made in 1859, one with a broken wheel and one not, are in the case as exhibits, marked "Original Earle" (see illustrations, fig. 1 and fig. 2).

EARLE'S INVENTION 1859.

Fig. 1, Original Earle.

Fig. 2, Original Earle.

The date, therefore, of the Earle invention of an egg-beater with thin, plain blades having cutting edges, and of a mechanical egg-beater having thin, plain blades with cutting edges, and provided with a foot at the bottom, a handle at the top, and an intermediate rotating device to carry the beating blades continuously in either direction, or alternately one way or the other, by means of a rotating rack and pinion, with a handle on the rack to move it, was as early as the latter part of 1859.

No Sales by Earle prior to Application.

The application of Earle was made December 22, 1862, three years after the invention, for the modified form fig. 3 which was put on the market in the fig. 4 form (pp. 39, 34, int. 35; pp. 13–22); but no evidence of intermediate sales by Earle is given.

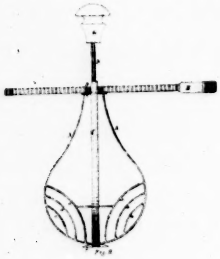


Fig. 3, Earle patent drawing.

Fig. 4, Exhibit C, Earle.

Earle Original and First Inventor.

Earle was, therefore, the original and first inventor of the thing described in his original or reissued patent.

No pretence is made that anybody anticipated it.

The evidence *in pais* of Samuel Ayers (R. p. 50) and John W. Howe (R. p. 59), is that in the year 1860, before February 18, Ayers invented the Ayers egg-beater (fig. 5, R. 51), and began to put them out May 15, 1860 (R. p. 52; also p. 59, int. 4, and p. 60, int. 14).

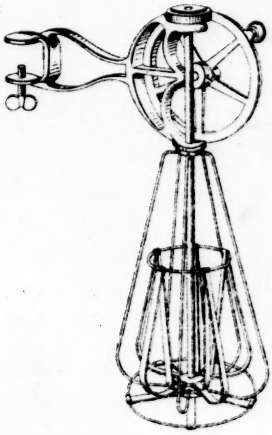


Fig. 5, Ayers.

The other invention alleged in anticipation, namely, the Seaman ice-cream machine, does not have thin, plain blades, does not have a handle at the top and foot at the bottom, and intermediate rotating mechanism as described by Earle, nor does the Ayers.

So that at the time of Earle's application for a patent he

was entitled, as the evidence in this case shows, to both of the claims of his reissue as printed on page 13 of the record; namely, —

"1. The revolving beater-frame, formed of thin, plain blades or cutters, arranged to cut edgewise through the material by their rotation, substantially as described.

"2. The combination of the fixed frame which supports the operative machinery, provided with a foot or support at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described."

But in taking his patent, the second claim was not inserted, and the claim, although a little different in language from the first claim of the reissue, described the same invention as the first claim of the reissue, and was entitled to the same construction coincident with the state of the art.

The illustration of the patent was substantially as shown in fig. 3.

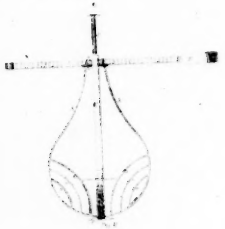


Fig. 3, Earle patent drawing.

Instead of the rotating rack and the revolving pinion with a round wire fixed frame and transverse cutting blades, and with a round wire revolving frame and transverse cutting edges, as shown in figs. 1 and 2, *brief*, he had a vibrating rack and pinion, a flat fixed frame and a flat rotating frame, and on the interior of the thin, flat, rotating frame a series of some more thin, flat blades which rotated with it.

These interior thin, flat blades, which rotated with the thin, flat frame A, are lettered in the original patent, *a*, and the thin, flat rotating frame was lettered A, and the claim was (p. 39) —

"The use of a series of cutting edges, *a*, *a*, *a*, *a*, when attached to a frame, A, which is capable of being rotated, substantially as described, and for the purpose specified."

The description given is —

"My invention is designed to obviate the difficulty referred to [namely, that the common egg-beaters did not cut the yolks and whites of the egg, but literally beat them, and to provide cutting edges to a mechanical egg-beater, instead of beating and bruising edges to the mechanical egg-beater], and consists in the use of a frame, A, fig. 1, mounted on a spindle B, around which it can freely rotate. An outer frame, C, has the same general form as the inner one, but large enough to permit the inner frame to rotate within it, is attached to the spindle B, and furnishes a support for it. The inner frame is provided with a series of cutters, *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in many different planes. These cutters are simply pieces of sheet-tin, or other suitable metal, of the width of the inner frame, and so placed that their edges shall cut the material to be agitated when the frame A is rotated. Upon the top of the frame A is attached a toothed wheel, D, through which, by means of the rack E, figure 3, worked by the

hand, a rotary motion is given in alternate directions. . . . It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of a crank and suitable gearing, and the beneficial effects of the cutters *a*, *a*, *a*, would be obtained as well; but I prefer the method described of communicating motion to the frame, for the reason that the machine is more easily cleaned, and is more convenient for domestic use."

So that the rotating rack and the vibrating rack were not only known equivalents, as shown, at the time of applying for this patent, but they were suggested as equivalents in the specification.

One novelty of this mechanical egg-beater as described in the original patent (R. 39) was the providing it with cutters instead of bruisers. And there can be no question that cutters instead of bruisers in a mechanical egg-beater were new in 1859, when the invention was made, and in 1860, when the specification was drawn (R. 39), and in December, 1862 (R. 40), when the specification was filed.

Earle Invention Stated and Original Patent Construed.

The substance therefore of the invention, as described and claimed in the original patent, was the substitution of a *rotating frame of cutting edges* in a mechanical egg-beater for the *cage of bruisers* before in use by Munroe (fig. 6, Munroe; fig. 4*a*, "Exhibit C," p. 29, int. 4).

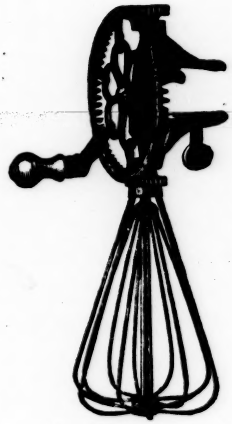


Fig. 6, Munroe,
Revolving *cage* of bruisers.

Fig. 4*a*, Earle,
Revolving *frame* of cutters.

Whether the revolving frame of cutter has less or more blades is immaterial. No revolving cutters had been used before, and no single frames, as distinguished from a cage, had been in use before. Ayers had a cage, Munroe had a pair of cages, Earle had a single frame. And Earle's was more easily cleaned and packed; and defendants use the frame and not the cage.

The Earle machine completely introduced the novel practise of mechanically cutting the egg matter by a novel instrument which embodied what had never been used before — a *frame of cutters* whose edges were all on the same vertical plane, instead of a *cage of bruisers* having several vertical planes of contact with the egg matter.

Whether there are more or less cutters is immaterial. All the driven parts have cutting edges and are in a frame, and have their edges on the same vertical plane, and there are no bruisers. While before Earle, all the driven parts were

bruisers, were arranged in cages, with their working parts arranged on different vertical planes.

It is not essential to Earle's invention that there should be more than one blade. Although the patent describes a frame of several blades, *a*, *a*, *a*, *a*, there is nothing in the description or invention that makes it essential there should be any given number of blades. The action and efficiency of one blade in no degree depends on the presence of another.

But its cleanliness, and hence its utility, does depend on the use of a single frame instead of a cage, and on the use of cutters instead of bruisers.

Now the original claim sets up as novelty the rotating frame with cutting edges attached thereto.

The Reissue changed the Literature of the Earle Patent, not its Legal Construction.

The construction of this claim of the original patent must be in accordance with the state of the art at the time.

Duff v. *Sterling Pump Co.*, 107 U.S. 639.
Tyler v. *Galloway*, 20 Blatchf. 446.
Brainard v. *Cramme*, 20 Blatchf. 532.
Fay v. *Frazer*, 11 Biss. 424.
Putnam v. *Hutchinson*, 11 Biss. 24.
Nat. Pump Co. v. *Gunnison*, 17 Fed. Rep. 812.

We find that a mechanical egg-beater with thin, plain blades was a novelty, and that cutting eggs by a mechanical egg-beater instead of bruising them was a novelty, and that the single frame was a novelty; and that the use of a series of cutting edges is completely answered by having more than one cutting edge in a movable beating frame of a beater.

The proper construction, therefore, of the original claim

would have held the defendants' beaters, which had four movable cut ng edges, to be beaters within the original patent of Earle, printed on page 39 of the record.

"The use of a series of cutting edges, *a*, *a*, *a*, *a*, when attached to a frame, A, which is capable of being rotated, substantially as described and for the purposes specified."

Four cutting edges are enumerated in the claim, and one rotating frame. The defendants use four cutting edges and two rotating frames (see figs. 7 and 8, "Washington" and "Family" egg-beater).

Fig. 7, Washington.

Fig. 8, Family.

On a narrow construction of the claim four movable cutting edges, in combination with two rotating frames, are mechanical equivalents for the cutting edges in the movable

frame of the original patent, and therefore the reissue is for the same invention, not only described in the original patent, but also the same invention claimed in the original specification.

In appellant's brief, page 22, are two illustrations of a delusive character.

In the Munroe patent eight wires were shown in each beater; in 1860, Munroe used six in each beater. The drawings of (p. 22) appellant's brief represent two wires to each beater, and appellant's argument proceeds on the notion that what Earle did was to flatten the round wires of Munroe's single bruising frame.

But more fairly stated, the Earle advance over Munroe was to reduce his *cages*, made up of *three or four intersecting frames of bruisers* ("eight or six wires," p. 29, int. 4), to a *single frame*, and besides to make that a *single frame of cutters*.

This also makes a clear distinction between Earle and Ayers which accounts in part for Earle's success and Ayers' failure commercially, as it will be seen further on that Ayers did fail.

SECOND POINT.

The interval between the grant of the original patent and of this reissue was very great for a substantial change or enlargement of the claim to be made in under the present doctrine of reissue; but if the construction of the first claim is as we have shown substantially the construction of the original claim, then the patent is good for that claim.

Gould v. *Spicer*, 15 Fed. Rep. 344.
Gage v. *Herring*, 107 U.S. 646.
Dunbar v. *White*, 15 Fed. Rep. 747.

THIRD POINT.

The pretended evidence of the use and sale of the patented invention for more than two years prior to the application by Earle for the original patent, July 7, 1863, is evidence about what is known as the Ayers beater, fig. 5.

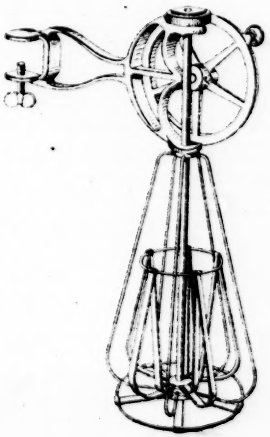


Fig. 5, Ayers.

Samuel Ayers in the early part of 1860 contrived and made an egg-beater which he thought would be a useful contrivance. He began to put it out in May, and he ended with it in December of that year. He sold out, in September or October, his business (R. p. 59, int. 4) to Mr. Howe. From six to twelve dozen egg-beaters were turned over at that time, partly finished and partly unfinished (R. p. 61, cross-ints. 22, 23). The unfinished ones were not put

together because Childs & Howe did not think they were worth anything (cross-int. 24).

The schedule of issue of these Ayers egg-beaters is on page 52, and adds up 594. The largest number to any one person was a gross, and the smallest 3; 22 customers had half dozen and less, 8, a dozen, 5, two dozen, 1, three dozen, 1, six dozen, and 1, a gross.

The history of this invention and introduction by Ayers was stated by complainants in the court below as follows: —

"It was a commercial disaster to engage in the manufacture. Only one lot was made, less than 50 dozen. Ayers retired from the firm before they were all sold. His successors never made any more, nor did they finish up those partly made. Hardly any purchaser ordered a second lot. The bills for them were on long credits and slow pay, and often trades for other goods; — were cut down, discounted, had percentages taken on them, goods were returned or went into scrap-heaps. And the year whose spring saw the birth of the Ayers beater, on Christmas day saw its final gasp of life in a sale of one dozen to Bridgman & Peabody, who were finally allowed a discount on their balance of 12½ per cent, or about 75 per cent of the price of the beaters." (See *Record*, p. 52, list of customers; p. 54, cross-ints. 36, 39, 40, 41, 47, 48, 49, 50; p. 56, cross-ints. 51, 54, 56, 57, 59, 60; p. 57, cross-ints. 61, 63, 65, 67, 69–75; p. 58, cross-ints. 76–79; *Howe*, p. 61, cross-ints. 23–25; *Morey*, pp. 26, 27, ints. 3–6; *Sawyer*, p. 28, int. 5; *Munroe*, p. 30, ints. 9, 10, 12; *Faulkner*, p. 49, ints. 3 and 4).

And the court below thus passed upon this question of anticipation (p. 79):

"The Ayers beater has an inner revolving frame [cage] of plain, thin metal, and on paper it was an anticipation of the Earle patent, but it was, practically, an unsuccessful instru-

ment. The greater part of the 50 dozen were speedily pushed into the hands of retail dealers, but the article soon turned out to be unsalable, and disappeared. The reason of its disappearance is obvious, for the defects in its clumsy construction are manifest. The principle was not embodied in the machine in a useful or practical form, and although Ayers had conceived the idea of cutters or blades, he had not practically made the idea valuable to the public. Assuming that a sale by Ayers of the patented invention for more than two years before the inventor's application is a good defence, I do not think that Ayers' sale of an unsuccessful and useless device, though it contains the principle of the Earle invention, is a sale which should invalidate the Earle patent."

In other words, the court applied the doctrine of the patent law, that a patent is the reward given to an inventor because he has done a thing which is of practical use to the community, or which has developed into a thing of practical use to the community. In the same way that a sketch, a mere sketch, is held not to anticipate a patent, and that a description is held not to anticipate a patent, unless it is sufficiently definite to enable a person skilled in the art to construct the thing of the patent, — so this impracticable suggestion, sketched in the round instead of in the flat, was held not to anticipate the Earle patent.

It was neither a useful nor a practical embodiment of the mechanical idea, and not being a useful and practical embodiment of the idea, it cannot deprive of the benefits of his patent the inventor who *has* made a useful and practical embodiment of the idea.

The test of the vigor and power of a mechanical invention is, in a certain sense, its reproductive ability. Unless it creates for itself a demand substantially like the demand for other articles of the same sort, which is continually kept

up, it is not a thing worthy of the consideration as a mechanical embodiment of a mechanical idea.

It appears by the testimony of Munroe, who was in the mechanical egg-beater business in 1860, making beaters like "Fig. 6, Munroe," patented in 1859, reissued in 1860 (see R. p. 29), that the Munroe egg-beater in 1860 had a sale of

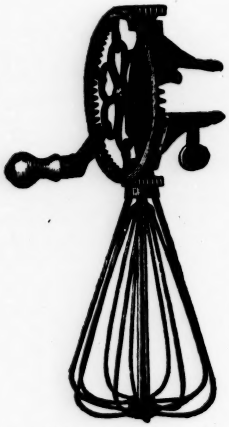


Fig. 6, Munroe,
Revolving *cage* of bruisers.

Fig. 4*a*, Earle,
Revolving *frame* of cutters.

several hundred dozens, and from that time on increased to frequent orders for hundred dozen lots, to a thousand dozens a year, and to several thousand dozens a year (R. p. 22, int. 6). And that many of Ayers' customers of 1860 were Munroe's customers in 1860 and after (p. 30, int. 8). And that the Ayers beater was not practical and was not a competitor; and that he never heard of one being sold (R. 30, int. 10).

It also appears in evidence in this case (*Foss*, p. 108, int. 3), that in 1874 the sales of one sort of egg-beater was 625 gross, and in 1879 reached 1500 gross; and this during the

active competition of the defendants, who made 1400 gross during the years from 1875 to 1879.

Compare this with the Ayers out-put of 4 gross, and it will be seen that the Ayers out-put, though nominally respectable in numbers, is with such an instrument as this a mere unsuccessful and abandoned experiment.

The whole out-put of the Ayers egg-beater in the seven months of its attempt was less than the average daily out-put of the Dover in 1879 and since.

NOTE. — Ayers out-put, 594; Munroe's annual average, 12,000; Dover, 1874, 90,000; 1879, 216,000; appellant's out-put, 215,172.

Do not these figures prove Ayers' unsuccessful experiment to have been a mere abandoned experiment?

And is not the cause of it shown by the fact that he organized a *cage* of cutters into his machine instead of a *frame* of cutters?

And does not his failure with the cage of cutters show that invention was needed to adapt the frame of cutters?

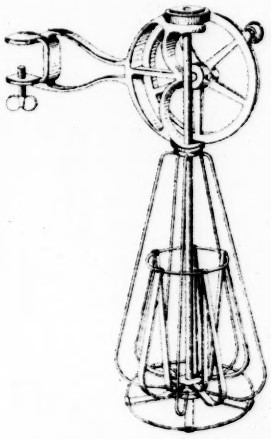


Fig. 5, Ayers.

Exhibit C, fig. 4.

Second.

But there is another and conclusive reason why the Ayers egg-beater is no answer to the Earle patent, even if it be assumed that the Ayers beater was a successful machine, and even if (as in fact it was) an unsuccessful and abandoned experiment; namely, *Earle's invention was prior in time to the Ayers invention*, and such public use or sale of the latter as was made was not *with the knowledge, "consent or allowance" of Earle.*

The dates bearing upon this point are as follows: —

Earle's invention was completed in the latter part of 1857, and was then embodied in two successful operative egg-beaters, which are exhibits in the case, marked "Original Earle."

Ayers invention, such as it was, was not made until *February*, 1860, two months, at least, later than Earle's invention. The first sale of the Ayers egg-beater was in May, 1860, and the last sale was December 25, 1860.

Earle's application for a patent was December 22, 1862.

Although the Ayers beater was in public use and on sale for more than two years prior to Earle's application, yet this fact cannot affect the validity of Earle's patent, because such public sale or use was not with the allowance or consent of Earle.

Upon this point, the validity of Earle's patent is to be determined by the law then in force (in 1862); and that was the statute of 1836.

By the express terms of that statute, the right of a prior inventor could not be defeated by any public use or sale of the invention unless made with *his consent or allowance.*

Although Earle's patent was reissued in 1875, the validity of his patent, so far as affected by public use or sale, is to be

determined by the law in force when his *original patent* was granted, and not by the law of 1870.

That this is so, is obvious from several considerations.

(1) The statute 1870 (Rev. Stat. sec. 4816) is not retroactive, but prospective. It prescribes the terms on which patents *thereafter may be obtained*. The language of the statute is too clear to admit of any other construction. It does not purport nor intend to repeal or nullify existing patents which were properly granted under the laws existing at the date of their issue. Nor would it be constitutional, if such were its effect.

(2) This being so, it follows that a patent valid under the law of 1836 could not become invalid because it is reissued after the statute 1870 took effect, merely because that law prescribes different terms upon which *original* patents shall thereafter be granted.

The whole theory of a reissue, a theory which the recent adjudications of this Court have rigidly maintained, is, that it is merely a better description of the invention, in fact, described and claimed in the original patent. It is a mere substitution for the original patent, and it runs only from the date of the original patent. The invention is one and the same; and in ascertaining whether the patentee was and is entitled to a patent as the original and first inventor, we are necessarily referred to the law as it existed when the original patent was granted.

(3) We have already said that the provision of statute 1870 (Rev. Stat. sec. 4816) is prospective, and does not attempt to affect existing patents. We may add that the statute is here dealing entirely with *original* patents, as distinguished from reissued. If it had been intended that the rule then adopted should also apply to all patents previously granted, if they should be thereafter reissued, thus making

it a condition upon which a reissue could be obtained, that the original validity of the patent should be made to depend upon the new law, instead of the law in force when it was granted, such a harsh and extraordinary provision would not have been left to mere inference or conjecture, but would have been set forth in the clearest and most explicit language.

(4) Upon the evidence, it is clear that, in point of fact, Earle had no knowledge whatever of Ayers' beater, or that it was in use or on sale; and, consequently, such sale and use was not with his consent or allowance.

THE SECOND ALLEGED ERROR. — INFRINGEMENT.

The court below did not say that the claim of the original patent was not infringed by the defendant's machine. What the court did say concerning the claim was (R. p. 78) —

"If it should be properly limited so as to be confined to the frame with the cutter or blades which are described in the specification and in the drawings, to wit, a frame with the cutters *a*, *a*, *a*, *a*, then there is no infringement; but if the claim is to be construed so as to include a beater-frame formed of thin, plain blades, then the invention which is recited in the first claim is found in the defendant's egg-beater."

Again:

"The scope of the claim was larger, and the principle was embodied in any revolving frame composed of thin and plain as distinguished from corrugated, cutting surfaces, so arranged as when rotated to cut edgewise through the material provided the frame was constructed and arranged substantially in the manner described in the specification."

It has already been shown that on a proper construction of the original claim, whether there are interior cutters or not, there is a series of cutters combined with a frame, namely, the cutting edges on the edge of the frame, and that that series, if there is only one movable frame, is a series of two, and if there are two movable frames, it is a series of four.

The defendants use a series of four cutters combined with two movable frames, and therefore not only infringe the complainant's invention and his claim of the reissue patent, but also infringe the claim of the original patent as properly construed, as already shown in the discussion of first alleged error (figs. 7, 8).

Fig. 7, Defendant's Beater, "Washington."

Fig 8, Defendant's Beater, "Family."

THE THIRD ALLEGED ERROR. — AS TO THE MASTER'S REPORT.

The defendants were summoned in to account, and filed their account showing sales to the amount of $35,273.33, and claimed to have expended a total amount of $34,734.14 (R. p. 82). The schedule of *alleged* costs appears on pages 147 to 152, and they are made up by items given by the gross, according to the schedule, and the labor appears as labor by the job, not as day labor.

It appears from Mr. Carson's testimony (p. 92, ints. 18, 23, 24, 25) that the labor on the defendants' beaters was paid for by the day, mostly, and that the only part that was paid for by the piece was assembling or putting together (*Brothwell*, R. p. 97). That all the rest was done by day work, and that prices per day were known, but that the amount that each man could do was estimated.

The defendants were asked the particularities about making up these estimated costs, about the cost of work that was done by the day and the checks or accounts of the workmen employed on the labor (R. p. 95, int. 59).

They did not produce these (p. 96, int. 68).

They pretended that they had made determinations on the various work (p. 118, cross-int. 8); and that they had books of cost and books of labor (p. 119, cross-int. 12); and had several memoranda of the egg-beaters (ints. 14, 15, 17, 18); and agreed to produce them (cross-int. 20), but did not.

These details vouching the account were never given in, and the master found that if the estimates were true the defendants went on for five years infringing the patent at a margin of profits of $1\frac{6}{10}$ per cent (p. 82). And no explana-

tion is given of this charity to the public, which the master finds to be improbable.

The complainant below appeared before the master with the right of every litigant in whose favor an account is made, to *surcharge* and *falsify*.

On examination of the account, complainants elected to falsify one set of items only, — the labor items.

These items except the "attaching floats to handle," $1.44, in all the accounts (R. 147, 8, 9; 150, 1), were for work done by the day (R. 97, ints. 3, 4.)

And the steps of the process (workman's time, workman's wages and work done) by which day wages were got into piece work, costs were not only not given and vouched, but the vouchers were refused.

Appellants claimed the cost of labor to be nearly $9 a gross. On examination of the work, and hearing evidence of experts well qualified by experience to judge of such work, the master found, as a fact (R. 84), that the cost of labor before April 1, 1877, was $5.97, and after April 1, 1877, was $3.94, and made up the cost of beaters, finished, boxed and packed, by the gross, as shown (R. 85). He allowed costs of royalties and tools, and he found, as a fact, that defendants' beaters cost only $24,671.47.

They claimed the beaters cost them nearly 16.14 cents each. They claimed to have sold them at nearly 16.4 plus cents each, making an average profit of two and seven tenths mills *each*, or about three cents a dozen, less than thirty-seven cents a gross.

It was found that the average cost was 11.46 cents, and that the average profit on a beater was nearly five cents, — nearly sixty cents a dozen, about $7.25 a gross.

He found, in short, that for every dollar put into goods, and into selling the goods, appellants got back $1.43, or did

about a forty per cent business. And that thirty cents of every dollar they received was profit.

This is reasonable on its face.

The claim of doing only a one $\frac{6}{10}$ per cent business is absurd on its face.

The claim (R. 152) that the bad debts were $576.77, and the surplus over bad debts was $559.15, is a claim that defendants did this business for 3½ per cent, or on a margin of the ordinary commercial guarantee of 2½ per cent and 1 per cent added!

If it is not apparent that the master has taken an erroneous view of the law in coming to his result, his conclusions will not be disturbed, unless it is clear, upon consideration of the whole evidence in his report, that the evidence will not sustain the result in any view of it.

The equity rule is settled that a master's report will not be overruled on the facts, unless there is no evidence on which it can be supported.

In this respect it is like a motion for a new trial.

Mason v. *Crosby*, 3 W. & M. 258, 269.
Dean v. *Emerson*, 102 Mass. 482.
Trow v. *Berry*, 113 Mass. 139.
Richards v. *Todd*, 127 Mass. 167.

The master proceeded, and his findings are based, on correct principles.

He first determined as a fact what was the cost of making the infringing machines. He did not, as set up in appellants' argument, substitute for the actual cost of making by defendants, the cost to complainants of making another similar machine, nor any other estimated cost.

Defendants asserted they had full and complete details of

the prices and quantities of work paid to and done by their workmen; they withheld this and refused to give it.

On this suppression of evidence the master was bound to arrive at the cost to defendants by a consideration of the legal evidence before him, to ascertain the sort and quantity of work done on the machines, and the time and wages of the men who did it.

On this he received the evidence of well qualified experts engaged in the same sort of work, on the same sort of machines, in a not remote locality, where like wages were paid, which was clearly competent to assist his inquiry.

But the only inquiry before the master first and last, was what was the actual cost to defendants of the 215,172 infringing machines.

This he found as a fact to be $24,671.47.

The evidence was not only sufficient to warrant this finding, but was inconsistent with any other and greater sum.

This being purely a question of fact, the court will not disturb the master's conclusion. And the defendants below have made $10,601.86 by their infringement.

The Profits are not to be Apportioned.

Defendants made and sold the two infringing beaters.

Complainants made and sold an improvement on the Earle beater, the Turner Williams or "Dover" beater, to amounts of several hundred thousands a year.

The master finds as a fact (p. 87) that the merchantable quality of the appellants' beaters, the thing which made them salable at all, was the frame of thin cutting blades, and that they embodied nothing else which made them merchantable.

This was a conclusion of fact, warranted and required by the evidence.

It is a conclusion which the court below confirmed (R. 176, 7).

And it was correct in law.

The leading cases sustain this.

Mowry v. *Whitney*, 14 Wall. 630, p. 651.

"The inquiry then is, what was the advantage in cost, in skill required, in convenience of operation, or *marketability*, in bringing car wheels, by Whitney's process, from the condition in which they are taken hot from the moulds to a perfected state, over bringing them to the same state by those other processes, and thus rendering them equally fit for the same service. That advantage is the measure of profits."

Elizabeth v. *Pavement Company*, 97 U.S. 126, p. 139: "When the entire profit of the business or undertaking results from the use of the invention, the patentee will be entitled to recover the entire profits, if he elects that remedy." Page 141: "The Nicholson pavement was a complete thing, consisting of a certain combination of elements. The defendants used it as such — the whole of it. If they superadded the addition made to it by Brocklebank and Trainer, they failed to show that such addition contributed to the profits realized. *The burden of proof* was on them to do this."

"Again, the appellants obtained an allowance of nearly $14,000 for the royalty paid by them for the use of the Brocklebank and Trainer patent. This allowance went so far in diminution of the profits recovered."

This rule was applied in *Garrettson* v. *Clark*, 15 Blatchf. 70, 78. 16 Off. Gaz. 806.

SUMMARY.

1. Earle was the original inventor of a beating-frame instead of a beating-cage.

2. He was the original inventor of cutting-blades instead of bruisers.

3. No prior use or knowledge of a beating-frame of cutting-blades is shown.

4. His original patent was entitled to be construed as for a revolving beating-frame of cutting-blades.

5. His reissue means by its first claim only that.

6. The reissue is valid.

7. The infringement on this construction is clear.

8. The master's finding of the facts of cost, is conclusive on the falsification of some items in the defendants' account.

9. The salable quality of defendants' goods was due solely to complainants' patented property.

10. The judgment should be affirmed.

11. Complainants should recover $10,601.66, and interest from April 26, 1881, and costs.

ELIAS MERWIN,
THOS: WM: CLARKE,
of Counsel.

N.B. — As the Munroe patent in evidence below (R. 39) and the Seaman's patent also in evidence below (R. 65) are not in the record, but are referred to in defendants' brief, and as no drawings of the Earle patent are in the record, copies of the drawings of these patents will be added to this brief.

111-319

No. 268

Supreme Court of the United States.

TURNER & SEYMOUR MFG. CO.,

APPELLANTS,

vs.

DOVER STAMPING COMPANY,

APPELLEES.

In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SECOND CIRCUIT AND DISTRICT OF CONNECTICUT.

APPELLANTS' BRIEF IN REPLY.

JOHN S. BEACH,
JOHN K. BEACH,
Counsel for Appellants.

NEW HAVEN:
TUTTLE, MOREHOUSE & TAYLOR, PRINTERS.
1884.

No. 268

Supreme Court of the United States.

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vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SECOND CIRCUIT AND DISTRICT OF CONNECTICUT.

APPELLANTS' BRIEF

IN REPLY TO [CONJECTURED] BRIEF OF APPELLEE.

Your Honors may remember that when this cause was called last week, the appellee had failed to have filed any brief.

Upon motion of counsel for appellee, with appellants' consent, it was ordered that the hearing should be upon printed briefs.

The appellants' brief had been daly filed.

It was ordered that the brief of the appellee should be furnished to appellants' counsel for reply, on or before Tuesday, March 25th, and that the cause be submitted on Monday, March 31st.

Receiving no brief from the appellee on Tuesday, a telegram was sent to the counsel of appellee on Wednesday morning, as follows:

"Failure to receive your brief as ordered by the Court, perplexes me. Please answer."

Late Wednesday evening came a reply,

"Will send you briefs to-day."

Still later the same evening counsel for appellee telegraphed.

"Sent by mail two copies full brief, also notice of diminution of record. Answer when received."

The "diminution notice" was received by mail on Thursday morning, the 27th, but no briefs, and at noon of that day the appellants' counsel telegraphed the counsel for appellee,

"Your too dilatory notice of diminution is received under protest. Diligent enquiry at post and express offices, fail up to this noon, to develop any copy of your brief. Your omission to comply with order of Court, compels me to print my reply in continuing ignorance of your points."

When this case was called on the 20th of March, the appellant was not willing to proceed to oral argument, waiving brief from appellee, for the reason that the main issue now presented to this Court, was not discussed in the ~~appellate~~ Circuit Court.

The contest before that Court was not upon the validity of the re-issued patent.

As the law was then understood, the appellant could not question the jurisdiction of the Commissioner in granting this re-issue, even though twelve years had intervened between the issuing of the original patent, and the application for its re-issue, and even though the avowed purpose was to so enlarge the claims of the re-issue as to enable the appellee to suppress the appellants' competition.

But under the decisions of this Court, in Miller vs. Bridgeport Brass Company, and Campbell vs. James, and kindred cases, this is no longer the law governing the question of the validity of re-issued patents.

The patent now in controversy consolidates all the infirmities which in these recent cases have been recognized as fatal to the validity of a re-issued patent.

First.—The original patent "fully and clearly without ambiguity or obscurity describes and claims a specific invention, complete in itself, so that it cannot be said to be inoperative or invalid by reason of a defective or insufficient specification."

Second.—There was no actual inadvertence, accident or mistake, in the claim of the original patent. The text of the specification and "the contemporary records" (see record, page 44), demonstrate, that the exact thing the patentee invented, described, and intended to claim, was "the use of a series of cutting edges *a*, *a*, *a*, *a* when attached to the frame A, which is capable of being rotated."

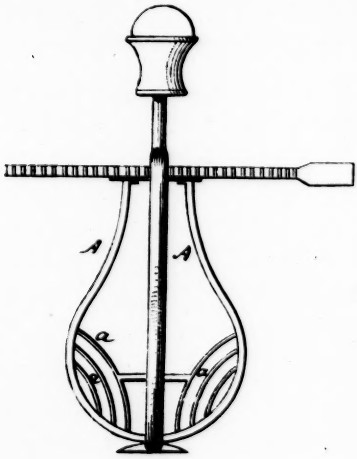
Third.—Whatever claimed mistake existed in the limitations of the claim of the original patent, such mistake was apparent on inspection of the document, and could be lawfully corrected only by a speedy application therefor, and before adverse rights had accrued.

Fourth.—This re-issue was not applied for until twelve years subsequent to the date of the original patent, and after the adverse rights of the appellant had accrued.

Fifth.—The application was made for the ostensible purpose of correcting a mistake which did not exist, but for the real purpose of so broadening the claim of the original patent as to suppress the intervening rights of the appellant.

But the appellants submit, that they may safely rely on the rule laid down in Miller vs. Bridgeport Brass Co., that laches of the patentee in applying for a re-issue deprives him of the right of enlarging his statement of claimed invention; and upon the applicability of that rule to the following state of the record which discloses that the original Earle patent was granted July 13, 1863, and claimed:

(1863) "The use of a series of cutting edges *a*, *a*, *a*, *a* when attached to a frame A, which is capable of being rotated substantially as described, for the purpose specified."

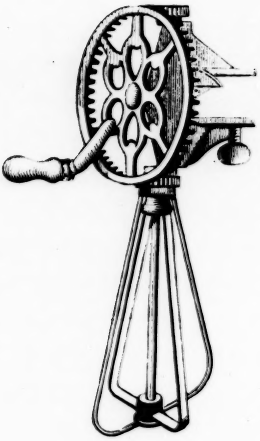


and that the re-issue in suit was applied for June 8, 1875, and claims,

"1st. The revolving beater frame formed of thin plain blades or cutters, arranged to cut edgewise through the material by their rotation substantially as described.

(1875) 2d. The combination of the fixed frame which contains and supports the operative machinery, provided with a foot or support at the bottom, a handle at the top and suitable mechanism for rotating the beater substantially as described."

(*See record, pp.* 13, 74; *also Defendants' Exhibit "Earle Original Patent."*)



The appellee, conceding, of course, that an "implied disclaimer," ripens in the course of twelve years into an insuperable obstacle to enlargement by re-issue, makes now the point that the changes introduced by the re-issue, are alterations of language merely, and that the meaning and scope of the two patents is the same.

We understand this to be a rear elevation of the plea that "he didn't know it was loaded."

In the Court below, every argument was urged by the appellee to show that the re-issue was not and ought not to be limited to the same construction as the original patent.

At that time, it was not claimed that the defendants (appellants) infringed the original patent.

Although the complainants introduced in evidence the original patent of Earle (Comp. Exhibit Earle

File Wrapper and Contents, Record, p. 36), no testimony was offered by them comparing defendants' beaters with the device therein described.

This being the conceded construction of the original, the defendants (appellants) contended, that the re-issue must be construed to be for the same invention as the original, and as they confessedly did not infringe the original, they could not be held to infringe the re-issue.

And his Honor, Shipman, J., in the decision of the case, expressly held that the defendants did not infringe the original patent, saying (Record, p. 78),

"The question of infringement of the first claim of the re-issued patent depends upon the construction of the claim. If it should be properly limited so as to be confined to the frame with the cutters or blades which are described in the specifications and in the drawings, to wit: a frame with the cutters *a*, *a*, *a*, *a* then there is no infringement * * *.

The original and also the re-issued specification dwelt upon the particular form of the cutters of the inner frame, and the original claim limited the invention to the cutters *a*, *a*, *a*, etc."

It also appears from the record that the pressure of the defendants' competition was felt before the re-issue in suit was applied for, from which it may be inferred that infringement of the original was not obvious at that time.

Record p. 108:

L. Bacon Foss, sworn.

Q. What is your occupation?

A. I am general manager of the Dover Stamping Company, a corporation whose business is in Boston.

Q. 6. When did the Turner & Seymour competition begin and when did it cease?

A. *It began to be felt in* 1874, *and I have never known it to cease.*

The re-issue was not applied for till June 8, 1875.

This case was tried before the decision of Miller vs. Bridgeport Brass Company, and it was assumed by the complainant that the lapse of twelve years between the date of the original patent and the application for the re-issue, had not impaired the right of the patentee to go back and recover all that he might have claimed in the first place: and the complainants' right of recovery was staked upon the soundness of that proposition.

The Court adopted the complainants' view, and on the question of the validity of the re-issue held as follows:

"The question of infringement of the first claim of the re-issued patent depends upon the construction of the claim. If it should be properly limited so as to be confined to the frame with the cutters or blades which are described in the specification and in the drawings, to wit: a frame with the cutters *a*, *a*, *a*, *a* then there is no infringement, but if the claim is to be construed so as to include a beater frame formed of thin plain blades, then the invention which is recited in the first claim is found in the defendant's egg-beater.

* * * * * * * * *

The original and also the re-issued specification dwelt upon the particular form of the cutters of the inner frame, and the original claim limited the invention to the cutters *a*, *a*, etc., but the scope of the invention was larger, and the principle was embodied in any revolving frame composed of thin and plain, as distinguished from corrugated, cutting surfaces, so arranged as when rotated to cut edgewise through the material.

provided the frame was constructed and arranged substantially in the manner described in the specification. * * * * * * * *

The patent was surrendered because the grant was not co-extensive with the invention, and it would be an unnatural construction of the re-issued patent which should cramp the claim within the limitations which had been discarded. In my opinion, the natural meaning of the words which were used is to be permitted, and giving to the claim such a freedom of construction, the defendants' device is an infringement.

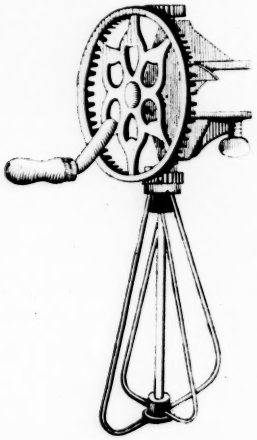
It must have been fatal to the complainants' case to have suggested to a Court which so construed the original patent, that the re-issue was no broader than the original: the decree sustaining the bill was based wholly upon the margin of claimed difference between the two patents, and it would be a curious instance of the uncertainty of litigation, if a decree which was granted upon the ground that the re-issue was broader than the original, should be sustained, in this Court on the ground that there was no such enlargement.

In other words, it is now contended by the appellee —for the first time in the progress of this cause—that the appellants' structure does infringe the single claim of the original patent, that the Circuit Court was wrong in finding that it did not infringe that claim, and they ask that this finding of the erring Court may be reversed, to the end that its judgment may be affirmed.

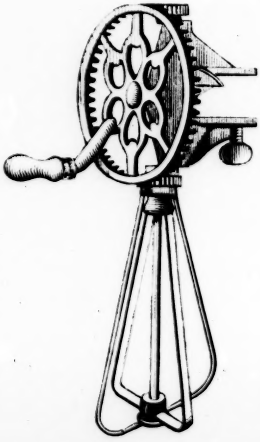
But the Circuit Court was clearly right in its finding that the appellants' beater was no infringement of the single claim of the original patent.

There will be found in the original patent a statement of the prior art in which it appears that,

"Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process. One of these devices consists of two wire frames one within the other and made to revolve in opposite directions."



and the appellants' beaters which are alleged to infringe the re-issue are precisely of that construction, the only difference being that they are made of flat wire instead of round wire.



In view of this fact that the beaters complained of are in all respects older than the patent save in the use of flat wire instead of round wire, it is necessary for the appellee in order to sustain the claim of infringement, to construe the re-issued patent broadly for the use of flat wire in beater frames, irrespective of the kind of beater frame.

SO CONSTRUED THE CLAIMS OF THE RE-ISSUE OF 1875 ARE BROADER THAN THE ORIGINAL OF 1863.

This proposition was not disputed in the Court below, and no evidence was offered upon this point other than the original patent itself, and an exhibit prepared by the witness Earle and printed in the record (pp. 74, 75, 76), entitled "Defendants' Exhibit Original and Re-issue Compared," as follows:

DEFENDANTS' EXHIBIT "ORIGINAL AND RE-ISSUE COMPARED."

Copy of re-issued Letters Patent to TIMOTHY EARLE, in which the parts in italics are not in the original, and the parts enclosed in parentheses are in the original, and excluded from the re-issue.

UNITED STATES PATENT OFFICE.

TIMOTHY EARLE, of Lincoln, R. I., assignor by mesne assignments, to THE DOVER STAMPING COMPANY, of Boston, Mass.

IMPROVEMENTS IN EGG-BEATERS.

Specifications forming part of Letters Patent No. 39,134, dated July 7, 1863; re-issue No. 6,542, dated July 13, 1875; application filed June 8, 1875.

To all whom it may concern:

Be it known that I, TIMOTHY EARLE, of Lincoln (formerly Smithfield), in the county of Providence and State of Rhode Island, have invented (*a*) *certain* new and useful improvements in egg-beaters; and I do hereby declare that the following specification, taken in connection with the drawing, making a part of the same, is a full, clear and exact description thereof.

Fig. 1 is a view of the beater. Fig. 2 is another view of the same, with the rack which works it shown. Fig. 3 is a top view of the same.

Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process. One of these devices consists of two wire frames, one within the other and made to revolve in opposite directions: another consists of a propeller-blade inside of a wire frame, the frame and blades being made to revolve in opposite directions: and still another consists of a propeller-blade, which is made to rotate while a pair of beaters have at the same time a reciprocating motion. All these machines and all others with which I am acquainted, possess the common fault that the beaters, whether of wire or of the form of propeller-blades, do not cut the yolk and white of the egg, but literally beat them. Now, as the albumen of an egg consists of a peculiar thick glairy substance, it can be worked more effectually with a cutting instrument than with one which has a blunt edge. In fact, so well is this understood that housewives (universally) *commonly* make use of the blade of a knife for the purpose. My invention is designed to obviate the difficulty referred to; and consists in the use of *a revolving* frame A, *formed of thin strips of metal of the form shown, and* mounted upon a spindle B, around which it can freely rotate: *and also of* an outer *fixed* frame C, of the same general form as the inner one, but large enough to permit the inner frame to rotate within it. *The outer frame* is attached to the spindle B, and *with it* furnishes a support *or frame for the operative parts of the machine* (for it). The inner frame is *further* provided with a series of cutters *or blades* (*a*, *a*, *a*, *a*), *a*, *a*, *etc.*, arranged in any manner suitable for cutting *through* the fluid in many different (planes) *places*. These cutters *or blades* are simply pieces of sheet-tin or other suitable

metal of the width of the inner frame, and *are attached to the same by their ends, as is shown, and they are all* so placed that their edges shall cut the material to be agitated when the frame A is rotated. *The blades which form the outer fixed frame C are also placed in a similar position, and when the machine is in operation, cut through the current of material which is carried past them by the revolving frame, and thus aid the operation in a similar manner.* Upon the top of the frame A is attached a tooth wheel D, through which by means of the rack E, Fig. 3 worked by the hand, a rotary motion is given *to the inner frame* A in alternate directions. *The frame C, at its upper end, is so formed and arranged in relation to the pinion* D *as to leave the proper space between them, upon either side, to receive the rack* E, *and to serve as a guide or bearing to keep the rack in gear with the pinion; and* H *is a circular flange attached to the lower side of the pinion to prevent the rack from falling down.*

My invention also relates to the method of holding the machine in position while it is used. In the previous machines for this purpose the machine has been generally attached to or supported upon and in connection with the vessel which contained the material to be operated upon, thus requiring a specific kind of vessel for the purpose, which in effect formed part of the machine; or the frame of the machine was fixed to some stationary object, with the revolving beater or beaters projecting downward below the machine into the vessel which contained the matters to be treated, the vessel being held below the machine, and entirely detached from it. But by my improvement the machine becomes a separate detached implement, which can be used in any vessel, and without any mechanical fastening of the

machine to the vessel or to any other object. This part of my invention consists therefore in providing the bottom of the fixed frame C *of the machine with a foot* F, *or other suitable support, to rest upon the bottom of the vessel to support the lower part of the machine and raise the revolving beater frame* A *above the fixed frame* C *sufficiently to permit it to revolve freely; and also providing the top of the machine with a handle,* G, *by which the machine can be held upright upon the bottom of the vessel by one hand, while the beater frame is operated by the other, as is described.*

When the machine is to be used it is placed with its foot F, resting upon the bottom of the vessel containing the broken eggs. The left hand bears upon the handle G and holds the machine in position. The rack E, held by the handle in the right hand, is engaged with the pinion D, and the proper motion imparted to the frame A.

It is obvious that a continuous rotary motion may be easily imparted to the frame A by means of the crank and suitable gearing, and the beneficial effect of the blades *or cutters* (*a*, *a*, *a*,) A, *a*, *etc*, would be obtained as well; but I prefer the method described of communicating motion to the frame A, for the reason that the machine is more easily cleaned and is more convenient for domestic use.

(What I claim as my invention and desire to secure by Letters Patent is the use of a series of cutting edges *a*, *a*, *a*, *a* when attached to a frame A, which is capable of being rotated substantially as described for the purpose specified).

What I claim is:

1. *The revolving beater frame formed of thin plain blades or cutters, arranged to cut edgewise through the material by their rotation, substantially as described.*

2. *The combination of the fixed frame, which contains and supports the operative machinery, provided with a foot or support at the bottom, the handle at the top, and suitable mechanism for rotating the beater, substantially as described.*

The obvious expansion of the statement of invention is in two directions:

1st. The first claim of the original is re-stated in such form as to make it irrespective of "the use of a series of cutters *a*, *a*, *a*, *a*." And several suppressions and additions are resorted to, which harmonize the the specifications of the re-issue with this enlarged statement.

2d. A new claim is added, supported by the introduction of new matter and looking to another branch of the invention.

This second claim cannot be insisted upon, for it is altogether unheard of in the orginal: and if this claim and the new matter supporting it can be regarded as surplusage and not affecting the validity of the rest of the re-issue, the remaining question is simply as to the difference between the original and the first claim of the re-issue.

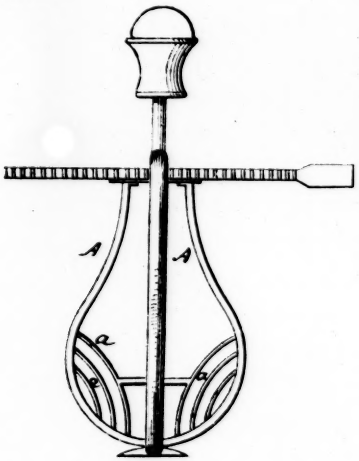
The original claim was for

"The use of a series of cutters *a*, *a*, *a*, *a*, when attached to a frame A, which is capable of being rotated substantially as described for the purpose specified."

In the original specification the use and arrangement of these cutting edges is stated as follows:

"The inner frame is provided with a series of cutters *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in *many different planes.*

And the drawings show that what is meant by many different planes is many different radial distances from the axis of rotation.



The effect being that a single beater frame when supplied with this series of cutting edges was capable of cutting the fluid in many different planes of rotation at one and the same time. That was the patentee idea of the best method of utilizing the suggestion that cutting edges would work the egg more effectually than round wire edges.

The appellants' beater is of this construction:

It consists of two beater frames, one within the other and arranged to rotate in opposite directions, each formed of a single piece of flat wire. Neither the inner nor the outer frame has any series of cutters attached to it. Each of these frames cuts through the fluid in many different places in the course of its revolution, but neither alone nor in combination with each other do they cut the fluid in many different planes.

The duplication of beater frames was a well-known contrivance at the date of the original patent, and is no more an equivalent for a single beater frame provided with a series of cutters, than a double-barreled gun is an equivalent for a revolver.

Each of these frames requires a separate pinion to drive it, each is complete without the other, and we may add that the double frame could not be operated together by *the rack and pinion* which the patentee, in his original patent "prefers" as a motive power.

Not only is the statement of invention enlarged by the re-issue but the basis of the invention itself is changed.

The beating of eggs consists simply in agitating the egg matter, with a fork, a bundle of wires or quills, or with a knife. The particular instrument is a matter of taste or prejudice.

It having occurred to some one that egg matter might be more conveniently agitated if the instrument were rotated or vibrated by machinery, the machinery was invented, and the choice of instrument, whether knife or fork, to be attached to the machinery was probably determined in the first instance by the prejudice of the inventor's housewife in favor of the fork or round edge beater. Some of the early forms of beaters are nothing more than a four or five tined fork arranged to be rotated in the egg. The fork was subsequently elaborated into many shapes of round edged beaters, as appears by the patent, and other forms of beaters such as propeller-blades or corrugated and twisted flat wire were attached to the rotating axis of the beater.

But it was well understood, says the patent, that the albumen of an egg could "be worked with a cutting instrument" and that housewives made use of the blade of a knife for that purpose.

And the inference is plain upon this statement of the art, that the knife-blade which worked well when vibrated by the housewife, would also work well when operated by the same machinery as that which had already been successfully used to vibrate or rotate forks.

It seems, therefore, that no patent could be issued broadly for the substitution of the knife for the fork—offlat wire for round wire—in these many known constructions of mechanical egg beaters.

There may have been invention, or at least that sort of selective judgment which practically does very well

to support a patent, in finding out the particular kind of beater frame, or the best arrangement of cutters, for effectuating the suggestion that, inasmuch as knives were well-known substitutes for forks in hand beaters, they might also work successfully in mechanical egg-beaters. That is the invention set forth in the original patent, to wit: a series of cutters attached to a frame and so situated with reference to the axis of rotation as to cut the fluid in many different planes.

But if the patent is to be construed to cover old forms of egg-beaters simply because they exhibit the application of knives instead of forks to their rotating shafts, then the invention must be put on a different foundation.

If the infringement is to be determined by the presence or absence of a thin plain blade, irrespective of the mechanical embodiment of the blade into any particular form of beater frame, then the invention also must be irrespective of the mechanics and relate to the idea or suggestion of vibrating a knife blade by machinery for the purpose of beating eggs.

We respectfully submit that there could not have been any invention of Mr. Earle in that broad suggestion, for on the face of the patent it was all suggested to him.

The machinery was old, the form of the beater frame was old, the use and effect of a knife blade in beating eggs was well known; and a claim to the use of the old knife blade, with the old machinery behind it, to effect just what the same knife blade had before accomplished with the housewife behind it, is not sustainable upon any theory which requires invention to support a patent.

On this point we also desire to direct the attention of the Court to the Ayres beater as reinforcing the argument against the patentability of a broad claim to the use of cutting edges in beater frames.

Reference is made to pages 12–20 of the Brief for Appellant for a more general consideration of this beater.

In the opinion of the Court below it was said (Record, page 79),

> "I do not think that the sale by Ayres of an unsuccessful and useless device, though it contain the principle of the Earle invention, is a sale which should invalidate the Earle patent."

We submit that the soundness of that doctrine depends entirely on the construction of the Earle patent.

If the invention on which that patent is based relates to the solution of a mechanical problem, then it is undoubtedly true that a prior unsuccessful and useless device will not anticipate the patent, because it does not solve the problem satisfactorily.

But if the invention is claimed to reside in the suggestion itself of making beater frames of flat wire irrespective of their construction, so that any one practices the invention who makes an entirely old form of beater frame out of flat wire, then the prior embodiment of what is plainly the same suggestion in an useless and impracticable device *will* defeat the patent.

For along with the undoubted right arising out of the public use, and sale to use the identical beater of Ayres, goes the right to use ordinary intelligence in

adapting any desirable suggestion therein exhibited, to familiar forms of apparatus employed for the same and cognate uses.

After the preceding matter was put into the hands of the printer, and on the afternoon of Thursday, March 27th, the appellees' brief was received.

Inasmuch as it was plainly necessary for the appellee to come up to a fixed point on the question of the validity of the re-issue, the preceding brief may be said to be a reply, though if the appellees' brief had been received as was expected, much space might have been saved.

The controlling issue is as to the validity of the re-issued patent. That is the question which the appellee must look squarely in the face.

The ingenious and unheard of distinction between "cages" and "frames," the sanguinary difference between "bruisers" and "cutters," and all the minor claims of prior invention, merit and utility which ornament because they conceal the real proposition, disappear in the final analysis; and the naked issue, whether the claim of the re-issue is not broader than the claim of the original resumes its native ugliness.

Nothing worse could happen to the appellees' case than to state it briefly. It is this:—

In 1863, one Earle took out a patent in which he claimed the use of a series of cutters, when attached to a frame.

In 1874 the appellants manufactured an apparatus in which the frame was formed of thin plain blades but which had no series of cutters attached to the frame.

In 1875 the Earle patent was re-issued for a beater frame formed of thin plain blades.

In 1877 the appellees brought suit, and recovered $10,000 for infringement of the new claim to a beater-frame formed of thin plain blades, on the theory that it was not limited to a series of cutters.

Now the times not being favorable for pushing that theory, they set up a new one. That the words "series of cutters attached to a frame" means the same thing as a "frame formed of thin plain blades."

The alterations introduced by the re-issue into the claim of the original, they say were purely "literary" and result in no change of meaning.

They ask the Court to believe that the appellees chafing under the competition of the appellants, altered their statement of invention before bringing suit from an artistic and critical stand point, and without intent to change its meaning.

One who deliberately stops to load a gun with a fresh charge of powder and ball, before firing at his adversary, must be supposed to have reasons for believing that the new charge would be more effective than the old.

Cast in the form of a proposition of legal algebra, the appellees' contention is that

The claim to (Re-issue 1st claim)	=	The claim to (Original claim.)
The revolving beater-frame formed of thin plain blades or cutters arranged to cut edgewise through the material by their rotation, substantially as described.	=	The use of a series of cutting edges a, a, a, a, when attached to a frame A, which is capable of being rotated substantially as described for the purpose specified.

And in support of that proposition some methods of reasoning are used and statements of intermediate conclusions are arrived at which we desire to criticize very hastily in the little time remaining.

On pages 7 and 8 of appellees' brief this question is adroitly approached from behind. First the conclusion is arrived at by a statement of the prior art, that "at the time of the Earle application for a patent he was entitled as the evidence in this case shows, to both the claims of his re-issue." And the conclusion that the re-issue as not expanded is stated thus,

"The claim (of the original) although a little different in language from the first claim of the re-issue described the same invention as the first claim of the re-issue, and was entitled to the same construction coincident with the state of the art."

The proposition is that the original claim described the same invention as the re-issued claim; which is true in the sense that the greater includes the less, but it is the converse of the proposition which is the material one and which is not stated in that argument.

On page 11 of the appellees' brief occurs the statement that "whether the revolving frame of cutter has more or less blades is immaterial."

We do not so read the original patent. The essential characteristic of these cutters is thus stated: "The inner frame is provided with a series of cutters, *a*, *a*, *a*, *a*, arranged in any manner suitable for cutting the fluid in *many different planes*" (Record p. 39), and the claim is "The use of a *series* of cutters—attached to a frame." From which it appears that two things are essential, first a frame, second a series of cutters attached to the frame and the number and arrangement of those cutters must be such as to cut the fluid in *many* different planes.

It is also said (same page) that

"The Earle machine completely introduced the novel practice of mechanically cutting the egg matter by a novel instrument which embodied what had never been used before—a frame of cutters, etc."

But if the number of blades in the frame be immaterial, we reply in the language of the patent that "housewives commonly make use of the blade of a knife for this purpose."

On page 13 it is said:

"Four cutting edges are enumerated in the claim (of the original) and one rotating frame. The defendants use four cutting edges and two rotating frames."

Counting the frame as part of the cutting edges, there are *ten* cutting edges in the Earle patent drawing. (The learned counsel has forgotten to count both sides.)

Not counting the frame, the drawings of the Earle patent show eight cutters "attached." And as to the appellants' structure, quoting from the opinion of Shipman, J.,

> "In neither the inner nor the outer frame are there any additional blades or cutters like the blades *a*, *a*, *a*."

On page 14 the measure of Earle's improvement in the art is stated as follows:

> "The Earle advance over Munroe was to reduce his *cages* made up *of three or four intersecting frames of bruisers* ("eight or six wires," p. 29, int. 4) to a *single frame*, and besides to make that a *single frame of cutters*."

The difficulty with that statement is that it amounts to nothing unless coupled with the assertion that the Court will construe Earle's patent to be for everything that he "*might* have included in his patent had he been so disposed."

To what purpose is it to announce that Earle was the first inventor of a beating "frame" instead of a beating "cage" unless it be added that therefore he is entitled to have his claim construed so as to cover and protect that invention?

But we wholly deny that Earle was the first inventor of frames. The disclaimers of his patent demonstrate the absurdity of the claim, which has no other foundation than an accidental difference in the number of wires shown in the drawing of appellees' brief.

The patent says:

"Various devices have been employed for the purpose of beating eggs more expeditiously than by the familiar hand process.

One of these devices consists of two wire *frames*, one within the other, and made to revolve in opposite directions; another consists of a propeller blade inside of a wire *frame*, and blades being made to revolve in opposite directions; and still another consists of a propeller blade which is made to revolve while a pair of beaters have at the same time a reciprocating motion."

And no principle of the construction of written instruments will warrant the attempt to attach to the word "frame," when used in the claim, a different significance from that given to the same word in the disclaimer.

Nor would there have been any invention in altering a "cage" into a "frame," if it had been new and had not been disclaimed.

The appellees' brief admits that a "cage" is "made up of three or four intersecting frames" and Munroe testifies (*Record*, *p.* 29), "We varied the number of wires from time to time."

Neither can that distinction be successfully placed upon the ground indicated on page 11, of appellees' brief, that a "frame" has its edges all on the same vertical plane, whereas a "cage" has "several vertical planes of contact with the egg-matter;" for the reason that in the operation of the appellants' beater, the frames revolve in opposite directions around the same center, and their cutting edges move in intersecting vertical planes.

The illustrations in the appellees' brief show that the cutting edges of the two frames of appellants' beater do not remain in the same vertical plane.

This whole theory of the difference between a cage and a frame is something hitherto unheard of in the case.

We do not regard it as anything more than an attempt to distract the Court from other issues. Nothing in the testimony of Mr. Earle himself (Record, p. 48) substantiates it. On the contrary, the invention described in the patent is carried back of Ayres by proof of manufacture of two contrivances shown on page 5 of appellees' brief which have no "frames." And the patent itself disclaims the invention of a frame.

On the issue of the utility of the Earle invention the appellees' brief on page 19 gives the number of beaters manufactured by Ayers, Munroe, etc.

These figures are misleading unless care be taken to observe that no figures of the production of the "Earle" beater are given.

No figures of sales of the Earle beater were ever produced by the appellee.

Mr. Foss (record p. 1080) who is manager of the appellees' corporation, testified as follows:

Int. 3. In what form did your company put on the market the egg-beaters with cutting edges, as described in the Earle patent, from the year 1874 to the present time?

Ans. They were put on the market in the form of what is known as the Dover egg-beater, chiefly.

That single reservation conveyed by the word "chiefly," is the only indication upon the record that anybody ever manufactured egg beaters like those described in the specifications, and shown in the drawings

of the Earle patent; except a statement made by counsel, and not substantiated by testimony on page 137 of the record, that some 30 gross were made and sold.

Of the "Dover" beater having no series of cutters, the appellees made over 20,000 in one year.

We infer that from a commercial stand-point, at least, "a series of cutters attached to a frame," is not the equivalent of a "frame formed of thin plain blades."

On page 22 of the appellees' brief will be found a quotation from the opinion of Shipman J., which exhibits an important error.

His Honor is made to say, "The scope of the claim was larger." But the quotation, if correct, would be "The scope of the *invention* was larger."

And the context of the phrase was this, "The original claim limited the invention to the cutters *a*, *a*, etc., but the scope of the invention was larger, and the principle was embodied in any revolving frame composed of thin and plain * * * cutting surfaces," etc.

This mistake and its correction illustrate with curious exactness the difference between us.

All through the appellees' brief runs the assumption that the "Claim" is synonymous with "invention." That whatever, upon an examination into the prior art appears to have been new at the date of the patent, and in the light of twelve years development appears to be the ultimate advantage which has been derived from its various applications, is to be taken as the invention of Earle.